

MONTANA LEGISLATIVE HISTORY

Chapter 500 19 95

Bill H _____ S 354

Original bill & history ☒ C

H. Committee on Business & Labor

Hearing Date(s) Mar 15 ☒ C

Mar 21 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 21 ☒ C

S. Committee on Labor & Employment Relations

Hearing Date(s) Feb 18 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Feb 18 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

4/12 SIGNED BY GOVERNOR
CHAPTER NUMBER 394
EFFECTIVE DATE: 04/12/95

SB 354 INTRODUCED BY FORRESTER, ET AL.
PROVIDE FOR CONTRACTOR REGISTRATION

2/10	INTRODUCED		
2/10	FIRST READING		
2/10	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/11	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/18	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	30	20
2/22	3RD READING PASSED	30	20
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & LABOR		
3/15	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED	53	45
3/27	3RD READING CONCURRED	58	39
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	37	7
4/03	3RD READING AMENDMENTS CONCURRED	40	5
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 500		
	EFFECTIVE DATE: 10/01/95		

SB 355 INTRODUCED BY FORRESTER, ET AL.
GENERALLY REVISE LAWS RELATING TO TOW TRUCKS AND ABANDONED
VEHICLES

2/10	INTRODUCED		
2/10	FIRST READING		
2/10	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/11	HEARING		
2/11	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	50	0
2/20	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/06	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	76	24
3/15	3RD READING CONCURRED	81	17
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	46	0
3/20	3RD READING AMENDMENTS CONCURRED	50	0
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		

SENATE BILL NO. 354

INTRODUCED BY Forester Simon HART Julian Galvin
Seuteng

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; SETTING REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS; PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 37-71-211, 39-3-703, AND 39-3-705, MCA; AND REPEALING SECTION 39-3-704, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of labor and industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt rules to implement a self-funding registration program for contractors to ensure that:

- (1) contractors are in compliance with the laws governing workers' compensation coverage, unemployment insurance coverage, and other state laws;
- (2) the consumers of construction services are protected; and
- (3) all persons in the construction business are operating on a "level playing field" with regard to compliance with state laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** It is the purpose of [sections 1 through 28] to:

- (1) afford protection to the public, including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor, from unreliable, fraudulent, financially irresponsible, or incompetent contractors; and
- (2) ensure that all contractors are competing fairly and in compliance with state laws.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 28], the following

1 definitions apply:

2 (1) "Contractor" means a person, firm, or corporation that:

3 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
4 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,
5 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to
6 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other
7 structures or works, or the installation or repair of roofing or siding; or

8 (b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property,
9 employs members of more than one trade on a single job or under a single building permit, except as
10 otherwise provided.

11 (2) "Department" means the department of labor and industry.

12 (3) (a) "General contractor" means a contractor whose business operations require the use of more
13 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole
14 or in part.

15 (b) The term does not include an individual who performs all work personally, without employees
16 or other specialty contractors, as defined in this section.

17 (4) "Specialty contractor" means a contractor whose operations do not fall within the definition
18 of general contractor.

19 (5) "Verification" means the receipt and duplication by a political subdivision of a contractor
20 registration card that is current on its face.

21

22 **NEW SECTION. Section 3. Registration required -- prohibited acts -- criminal penalty.** (1) On or
23 before July 1, 1996, each contractor shall register with the department.

24 (2) It is a misdemeanor for a contractor to:

25 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

26 (i) without being registered as required by [sections 1 through 28]; or

27 (ii) when the contractor's registration is suspended;

28 (b) use a false or expired registration number in purchasing or offering to purchase an
29 advertisement for which a contractor registration number is required; or

30 (c) transfer a valid registration to an unregistered contractor to work under a registration issued

1 to another contractor.

2 (3) A misdemeanor action under [sections 1 through 28] must be prosecuted in the county where
3 the infraction occurs.

4
5 **NEW SECTION. Section 4. Application for registration -- grounds for denial.** (1) An applicant for
6 registration as a contractor shall submit an application under oath on a form to be provided by the
7 department that must include the following information:

8 (a) the applicant's social security number;
9 (b) proof of workers' compensation coverage;
10 (c) proof of unemployment insurance;
11 (d) the I.R.S. employer identification number, if any;
12 (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of
13 specialty; and

14 (f) the name and address of:
15 (i) each partner if the applicant is a firm or partnership;
16 (ii) the owner if the applicant is an individual proprietorship; or
17 (iii) the corporate officers and statutory agent, if any, if the applicant is a corporation.

18 (2) The information contained in the application is a matter of public record and is open to public
19 inspection.

20 (3) The department may verify the workers' compensation coverage information provided by the
21 applicant in subsection (1)(b), including but not limited to information regarding the coverage of an
22 individual employee of the applicant. If coverage is provided under the laws of another state, the
23 department may notify the other state that the applicant is employing employees in Montana.

24 (4) Registration must be denied if:

25 (a) the applicant has been previously registered as a sole proprietor, partnership, or corporation and
26 was a principal or officer of the corporation; and

27 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part
28 7, that was incurred during a previous registration under [sections 1 through 28].

29
30 **NEW SECTION. Section 5. Bond or other security required.** Each applicant shall, at the time of

1 registration or reregistration, file with the department a surety bond or other security as provided in Title
2 39, chapter 3, part 7.

3
4 **NEW SECTION. Section 6. Certificate of registration -- issuance -- duration -- renewal --**
5 **suspension.** (1) The department shall issue to the applicant a certificate of registration upon compliance
6 with the registration requirements of [sections 1 through 28].

7 (2) If the department approves an application, it shall issue a certificate of registration to the
8 applicant. The department shall place the expiration date on the certificate. The certificate is valid until
9 the earliest date of:

- 10 (a) 1 year;
11 (b) the date the bond expires; or
12 (c) the date the insurance expires.

13 (3) A contractor may supply a short-term bond or insurance policy to bring its registration period
14 to the full 1 year.

15 (4) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is
16 canceled, the contractor's registration is automatically suspended on the effective date of the impairment
17 or cancellation. The department shall give notice of the suspension to the contractor.

18
19 **NEW SECTION. Section 7. When partnership or joint venture considered registered.** A partnership
20 or joint venture is considered registered under [sections 1 through 28] if one of the general partners or
21 venturers whose name under which the partnership or venture does business is registered.

22
23 **NEW SECTION. Section 8. Fees.** (1) The department shall charge fees for:

- 24 (a) issuance, renewal, and reinstatement of certificates of registration; and
25 (b) changes of name, address, or business structure.

26 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
27 issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through 28]. The
28 costs include reproduction, travel, per diem, and administrative and legal support costs.

29 (3) The fees charged in subsection (1)(a) may not exceed \$50.

30 (4) The fees collected under this section must be deposited in the state special revenue account

to the credit of the department for the administration and enforcement of [sections 1 through 28].

NEW SECTION. Section 9. Registration prerequisite to suit. (1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under [sections 1 through 28] without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.

(2) For the purposes of this section, the court may not find a contractor in substantial compliance with the registration requirements of [sections 1 through 28] unless:

(a) the department has on file the information required by [section 4]; and

(b) the contractor has a current bond or other security as required by [section 5].

(3) In determining whether a contractor is in substantial compliance with the registration requirements of [sections 1 through 28], the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.

NEW SECTION. Section 10. Exemptions. [Sections 1 through 28] do not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than \$500. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or different contractor, or in which a division of the operation is made into contracts of amounts of less than \$500 for the purpose of evasion of [sections 1 through 28] or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.

(9) except when work is performed by a registered contractor, to a construction or operation incidental to the construction or repair:

(a) of irrigation and drainage ditches of an irrigation district or reclamation district;

(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

(c) related to clearing or other work upon land in rural districts for fire prevention purposes;

(10) to an owner who contracts for a project with a registered contractor;

(11) to a person working on the person's property, whether occupied by the person or not, and a person working on the person's residence, whether owned by the person or not, but this exemption does not apply to a person otherwise covered by [sections 1 through 28] who constructs an improvement on the person's property with the intention and for the purpose of selling the improved property;

(12) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

(14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

(15) to a person who engages in the activities regulated as an employee of a registered contractor with wages as the sole compensation or as an employee with wages as the sole compensation.

NEW SECTION. Section 11. Business practices -- advertising -- penalty. (1) Except as provided in [section 7], a person who has registered under one name as provided in [sections 1 through 28] may not

1 engage in the business or act in the capacity of a contractor under any other name unless that name also
2 is registered under [sections 1 through 28].

3 (2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that
4 show a contractor's name or address must show the contractor's name and address as registered under
5 [sections 1 through 28].

6 (3) (a) The alphabetized listing of contractors appearing in the advertising section of telephone
7 books or other directories and all advertising must show the contractor's current registration number.
8 However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.

9 (b) All materials used to directly solicit business from retail customers who are not businesses must
10 show a contractor's current registration number. A contractor may not use a false or expired registration
11 number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not
12 subject to this subsection.

13 (4) A contractor may not advertise that the contractor is bonded because of the bond required to
14 be filed provided in [section 5].

15 (5) A contractor may not falsify a registration number and use it in connection with a solicitation
16 or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor,
17 officer, or employee of a contractor shall use a true name and address at all times while engaged in the
18 business or capacity of a contractor or in activities related to a contractor.

19 (6) (a) The finding of a violation of this section by the department at a hearing held in accordance
20 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty
21 of not more than \$5,000, as determined by the department. A penalty collected under this section must
22 be deposited in the general fund.

23 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent
24 error.

25

26 **NEW SECTION.** **Section 12. Unlawful advertising -- liability -- citations.** (1) When determining
27 a violation under [section 11], the person who purchased or offered to purchase the advertising must be
28 held responsible.

29 (2) If the department, upon investigation, has probable cause to believe that a person holding a
30 registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor

1 who is not otherwise exempted from [sections 1 through 28] has violated [section 11] by unlawfully
2 advertising for work covered by [sections 1 through 28] in an alphabetical or classified directory, the
3 department may issue a citation containing an order of correction. The order must require the violator to
4 cease the unlawful advertising.

5 (3) If the person to whom a citation is issued under subsection (2) notifies the department in
6 writing that the person contests the citation, the department shall offer an opportunity for an adjudicative
7 proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.
8

9 **NEW SECTION. Section 13. Disclosure statement required -- prerequisite to lien claim.** (1) A
10 contractor who agrees to perform a contracting project for the repair, alteration, or construction of four or
11 fewer residential units or accessory structures on residential property in which the bid or contract price
12 totals \$1,000 or more or of a commercial building in which the contract price totals \$1,000 or more but
13 less than \$60,000 shall provide the customer with the following disclosure statement prior to starting work
14 on the project:

15 "NOTICE TO CUSTOMER

16 This contractor is registered with the state of Montana, registration number _____, as a general or specialty
17 contractor and has posted with the state a bond or cash deposit of \$6,000 or \$4,000 pursuant to 39-3-703
18 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of
19 contract in the conduct of the contractor's business. The expiration date of this contractor's registration
20 is _____. This bond or cash deposit may not be sufficient to cover a claim that might arise from the
21 work done under your contract. If a supplier of materials used in your construction project or an employee
22 of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property
23 may be subject to a lien to force payment. If you wish additional protection, you may request the
24 contractor to provide you with original "lien release" documents from each supplier or subcontractor on
25 your project. The contractor is required to provide you with further information about lien release
26 documents if you request it. General information is also available from the department of labor and
27 industry."

28 (2) A contractor subject to this section shall notify a consumer to whom notice is given under
29 subsection (1) if the contractor's registration has expired or is revoked or suspended by the department
30 prior to completion or other termination of the contract with the consumer.

(3) A contractor subject to this section may not bring or maintain a lien claim under Title 71, chapter 3, part 5, based on a contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement required in subsection (1).

(4) This section does not apply to contracts authorized under Title 18, chapter 2, or to contractors contracting with other contractors.

(5) Failure to comply with this section constitutes an infraction under the provisions of [sections 1 through 28].

(6) The department shall produce model disclosure statements and public service announcements detailing the information needed to assist contractors and contractors' customers to comply with this section. The department shall periodically update the materials as needed.

NEW SECTION. Section 14. Department to compile and update list of registered contractors -- availability -- fee. (1) The department shall compile a list of all contractors registered under [sections 1 through 28] and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a contractor is registered and whether a contractor is bonded. The department shall provide the information without charge, except for a reasonable fee for any copies made.

NEW SECTION. Section 15. Provisions exclusive -- certain local authority not limited or abridged. The provisions of [sections 1 through 28] relating to the registration or licensing of a person, firm, or corporation, including the requirement of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive. A political subdivision of the state may not require or issue any registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This section does not limit the authority of a local government with respect to contractors not required to be registered under [sections 1 through 28].

NEW SECTION. Section 16. Violation -- infraction. (1) It is a violation of [sections 1 through 28] and an infraction for any contractor to:

1 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being
2 registered as required by [sections 1 through 28];

3 (b) advertise, offer to perform work, submit a bid, or perform work as a contractor when the
4 contractor's registration is suspended; or

5 (c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor
6 to work under a registration issued to another contractor.

7 (2) Each day that a contractor works without being registered as required by [sections 1 through
8 28], works while the contractor's registration is suspended, or works under a registration issued to another
9 contractor is a separate infraction. Each worksite at which a contractor works without being registered as
10 required by [sections 1 through 28], works while the contractor's registration is suspended, or works under
11 a registration issued to another contractor is a separate infraction.

12
13 **NEW SECTION. Section 17. Violations -- investigations -- evidence -- restraining orders --**
14 **injunctions.** (1) The department shall appoint compliance inspectors to investigate alleged or apparent
15 violations of [sections 1 through 28]. An authorized compliance inspector, upon presentation of appropriate
16 credentials, may inspect and investigate worksites at which a contractor had bid or is presently working
17 to determine whether the contractor is registered in accordance with [sections 1 through 28] or rules
18 adopted under [section 28] or whether there is a violation of [section 16]. Upon request of the compliance
19 inspector, a contractor or an employee of the contractor shall provide information identifying the contractor.

20 (2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee
21 is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice
22 to the contractor that the contractor is in violation of [sections 1 through 28]. An employee who is cited
23 by a compliance inspector is not liable for any of the alleged violations contained in the citation unless the
24 employee is also the contractor.

25
26 **NEW SECTION. Section 18. Failure to provide information to identifying contractor --**
27 **misdemeanor.** Willful refusal to provide information identifying a contractor as required by [section 17] is
28 a misdemeanor.

29
30 **NEW SECTION. Section 19. Restraining orders -- injunctions.** (1) If the authorized compliance

1 inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in
2 accordance with [sections 1 through 28] or the rules adopted under [section 28], the department shall issue
3 an order immediately restraining further construction work at the worksite by the contractor. The order
4 shall describe the specific violation that necessitated the issuance of the restraining order. The contractor
5 or representative to whom the restraining order is directed may request a hearing to be conducted pursuant
6 to the Montana Administrative Procedure Act. A request for hearing may not stay the effect of the
7 restraining order.

8 (2) In addition to and after having invoked the powers of restraint vested in the department as
9 provided in subsection (1), the department, through the attorney general, may petition the district court to
10 enjoin any activity in violation of [sections 1 through 28]. A prima facie case for issuance of an injunction
11 must be established by affidavits and supporting documentation that a restraining order was served upon
12 the contractor and that the contractor continued to work after service of the order. Upon the filing of the
13 petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending the
14 outcome of enforcement proceedings under [sections 1 through 28], or to enforce restraining orders issued
15 by the department. If the contractor fails to comply with a court order, the department shall request the
16 attorney general to petition the district court for an order holding the contractor in contempt of court and
17 for any other appropriate relief.

18
19 **NEW SECTION. Section 20. Notice of infraction -- service.** The department may issue a notice
20 of infraction if the department reasonably believes that the contractor required to be registered by [sections
21 1 through 28] has failed to do so or has otherwise committed a violation under [section 16]. A notice of
22 infraction issued under this section may be personally served on the contractor named in the notice by the
23 department's compliance inspectors or service may be made by certified mail directed to the contractor
24 named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation,
25 the notice may be personally served on any employee of the firm or corporation. If a notice of infraction
26 is personally served upon an employee of a firm or corporation, the department shall send a copy of the
27 notice by certified mail within 4 days of service to the contractor if the department is able to obtain the
28 contractor's address.

29
30 **NEW SECTION. Section 21. Notice of infraction -- form.** The form of the notice of the infraction

issued under [sections 1 through 28] must include a statement:

(1) that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination is final unless contested as provided in [sections 1 through 28];

(2) that the infraction is a civil offense;

(3) of the specific violation that necessitated the issuance of the notice of infraction;

(4) of penalty involved if the infraction is established;

(5) of the options provided in [sections 1 through 28] for responding to the notice and the procedures necessary to exercise these options;

(6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed and that the contractor may subpoena witnesses, including the compliance inspector who issued and served the notice of infraction;

(7) signed by the person who has been served with the notice of infraction that the contractor promises to respond to the notice of infraction in one of the ways provided in [sections 1 through 28];

(8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and may be punished by a fine, imprisonment in jail, or both; and

(9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine, imprisonment in jail, or both.

NEW SECTION. Section 22. Notice of infraction -- appeal -- determination -- failure to respond.

(1) A violation designated as an infraction under [sections 1 through 28] must be heard and determined in an administrative hearing. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department within 20 days of the issuance of the notice of infraction. The department shall conduct the hearing in the county where the infraction occurred.

(2) Unless contested, the notice of infraction represents a determination that the contractor to whom the notice was issued committed the infraction.

(3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of issuance of the notice of infraction.

(4) If a contractor named in the notice does not elect to contest the notice of infraction, the contractor shall pay to the department the amount of the penalty prescribed for the infraction. When

1 payment of the appropriate penalty is received by the department, the department shall make the
2 appropriate entry in its records.

3 (5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall
4 respond by filing an answer of protest with the department, specifying the grounds of protest.

5
6 **NEW SECTION. Section 23. Notice of infraction -- failure to respond -- refusal to sign -- penalty.**

7 (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the
8 contractor is guilty of a misdemeanor and must be prosecuted in the county where the infraction occurred.

9 (2) After a final determination by the department that an infraction has been committed, a
10 contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to
11 [section 26], and who fails to file an appeal pursuant to [section 25] is guilty of a misdemeanor and must
12 be prosecuted in the county in which the infraction occurred.

13 (3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies
14 pursuant to [section 25] is guilty of a misdemeanor and must be prosecuted in the county where the
15 infraction occurred.

16 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to
17 refuse to sign a written promise to respond to the notice.

18 (5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction
19 to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through
20 28], regardless of the ultimate disposition of the infraction.

21
22 **NEW SECTION. Section 24. Representation by attorney -- department represented by attorney**
23 **general.** A contractor subject to proceedings under [sections 1 through 28] may appear or be represented
24 by counsel. The department must be represented by the attorney general in the administrative proceeding
25 and in any subsequent appeals under [sections 1 through 28].

26
27 **NEW SECTION. Section 25. Infraction -- administrative hearing -- procedure -- burden of proof --**
28 **order -- appeal.** (1) The department shall conduct a case related to a contractor's notice of infraction
29 pursuant to Title 2, chapter 4.

30 (2) The burden of proof is on the department to establish the commission of the infraction by a

1 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes
2 that, at the time the notice was issued, the defendant was registered by the department, was not
3 suspended, or was exempt from registration.

4 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification
5 from the department that the contractor named in the notice of infraction was registered, was not
6 suspended, or was exempt from registration at the time the notice of infraction was issued.

7 (4) After consideration of the evidence and argument, the hearings officer shall determine whether
8 the infraction was committed. If it has not been established that the infraction was committed, an order
9 dismissing the notice must be entered in the record of the proceedings. If it has been established that the
10 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the
11 decision and order determining whether the infraction was committed.

12 (5) An appeal from the hearings officer's determination or order must be to the district court.
13

14 **NEW SECTION. Section 26. Infraction -- penalty.** (1) A contractor found to have committed an
15 infraction under [section 16] must be assessed a penalty of \$150 for each day for each infraction in which
16 the contractor conducted business without being registered, beginning with the date the notice of infraction
17 was served to the contractor or to the contractor's agent.

18 (2) The hearings officer may waive, reduce, or suspend the penalty imposed for the infraction only
19 upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

20 (3) A penalty collected under this section must be deposited in the general fund.
21

22 **NEW SECTION. Section 27. Violations -- consumer protection act.** The consumers of this state
23 have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with
24 contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under
25 [sections 1 through 28] is considered to affect the public interest and constitutes a violation of Title 30,
26 chapter 14, part 1. The surety bond is not liable for penalties or for violations of Title 30, chapter 14, part
27 1.
28

29 **NEW SECTION. Section 28. Rulemaking authority.** The department may adopt rules to implement
30 [sections 1 through 28].

Section 29. Section 37-71-211, MCA, is amended to read:

"37-71-211. Application for license -- contents. (1) To obtain a license under this chapter, the applicant shall submit on ~~such forms as that~~ the department ~~shall prescribe~~ prescribes an application, under oath, ~~which shall that must~~ contain:

(a) proof of registration under [sections 1 through 28];

(b) a statement of the applicant's experience and qualifications as a contractor;

(c) the value and character of contract work completed and for whom performed during 5 years prior to the filing of ~~such the~~ application; and

(d) a complete financial statement on ~~such the~~ forms and disclosing ~~such the~~ information ~~as shall be that is~~ required by the department.

(2) ~~Such The~~ application ~~shall must~~ also contain ~~such any~~ other information ~~as that~~ may be requested by the department under ~~such the~~ rules ~~as may be~~ adopted by the department and ~~which that~~ will assist the department in determining the applicant's fitness to act in the capacity of a public contractor as defined in this chapter.

(3) ~~Such The~~ application ~~shall must~~ also contain a statement that the applicant desires the issuance of a license under the terms of this chapter and ~~shall must~~ specify the field of contracting and the class of license applied for."

Section 30. Section 39-3-703, MCA, is amended to read:

"39-3-703. Contractor to furnish bond for wages and fringe benefits -- bond requirements -- deposit. (1) Any Except as provided in subsection (3), a contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other ~~which shall that must~~ be:

(a) approved by the commissioner;

(b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the commissioner~~ of \$6,000 for a general contractor and \$4,000 for a specialty contractor;

(c) in the name of the state of Montana;

(d) for the purpose of insuring;

(i) the wages and fringe benefits of all workers employed by the contractor for the contracted

1 work;

2 (ii) all taxes and contributions due to the state;

3 (iii) payment to persons furnishing labor or material and renting or supplying equipment to the
4 contractor;

5 (iv) all amounts that may be adjudged against the contractor by reason of negligent or improper
6 work or breach of contract;

7 (e) filed with the commissioner within 1 week of the making of the contract or the commencement
8 of work ~~thereunder~~ under the contract, whichever comes first.

9 (2) Only one bond ~~shall be~~ is required on any contractor for each year, and when the bond is filed
10 with and approved by the commissioner, the commissioner shall certify to any person contracting with a
11 contractor that the bond is in full force and effect.

12 (3) In lieu of the surety bond required by subsection (1), the contractor may file with the
13 department a deposit consisting of cash or other security acceptable to the department.

14 (4) A change in the name of a business or a change in the type of business may not impair a bond
15 for the purposes of this section as long as one of the original applicants for the bond maintains partial
16 ownership in the business covered by the bond."

17
18 **Section 31.** Section 39-3-705, MCA, is amended to read:

19 **"39-3-705. Suit on bond.** (1) Any ~~employee employed by a contractor~~ person, firm, or corporation
20 having a claim against the contractor for any of the items referred to in 39-3-703 may bring an action on
21 the surety bond in his own name for unpaid wages and fringe benefits in the district court in the county
22 in which the work was performed or in any county that has jurisdiction over the contractor.

23 (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon
24 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the
25 appropriate district court within 1 year from the date of expiration of the certificate of registration that was
26 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing
27 the state became due, the materials and equipment were furnished, or the claimed contract work was
28 completed. Service of process in an action against the contractor, the contractor's bond, or the deposit
29 must be exclusively by service upon the department. Three copies of the summons and complaint and a
30 fee of \$10 for handling costs must be served by certified mail upon the department at the time suit is

1 started. The \$10 fee must be deposited in the state special revenue fund to the credit of the department.
2 The department shall maintain a record, available for public inspection, of all suits served. Service is not
3 complete until the department receives the \$10 fee and three copies of the summons and complaint. The
4 service constitutes service on the registrant and the surety for suit upon the bond or deposit. The
5 department shall transmit the summons and complaint or a copy of the summons and complaint to the
6 registrant listed in the application and to the surety within 48 hours after it has been received.

7 (3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or
8 for any penalty assessed pursuant to [sections 1 through 28]. The liability for the surety may not
9 accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The
10 surety may, upon notice to the department and the parties, tender to the clerk of the court that has
11 jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less
12 any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the
13 tender. However, if the actions commenced and pending at any one time exceed the amount of the bond
14 then unimpaired, claims must be satisfied from the bond in the following order:

15 (a) labor, including employee benefits;

16 (b) claims for breach of contract by a party to the construction contract;

17 (c) materials and equipment;

18 (d) taxes and contributions due to the state; and

19 (e) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.

20 (4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in
21 effect in the full amount required in 39-3-703, the department shall suspend the registration of the
22 contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied
23 judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount
24 prescribed by 39-3-703.

25 (5) A person who filed and served a summons and complaint as required by this section and who
26 has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute
27 upon the security held by the department by serving a certified copy of the unsatisfied final judgment within
28 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the
29 department shall pay or order to be paid from the deposit, through the district court that rendered the
30 judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must

1 be the order of receipt by the department, but the department has no liability for payment in excess of the
2 amount of the deposit."

3
4 NEW SECTION. **Section 32. Repealer.** Section 39-3-704, MCA, is repealed.

5
6 NEW SECTION. **Section 33. Codification instruction.** [Sections 1 through 28] are intended to be
7 codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 28].

8
9 NEW SECTION. **Section 34. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

13 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0354, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for contractor registration; providing for fees to fund the administration and enforcement of the registration; setting requirements for registration; requiring surety bonds; providing exemptions; providing restrictions on advertising; providing for administrative hearings; providing for violations and penalties.

ASSUMPTIONS:

1. The workload activities in the proposed bill are similar to those in the Employment Relations Division for the Uninsured Employers' Fund (UEF) enforcement.
2. The Department of Commerce POL estimates there are 8,000 contractors in the state and the bill allows fees up to \$50. This would generate maximum revenue of \$400,000 (8,000 x \$50 license fees = \$400,000). This further assumes 100% of the 8,000 contractors are registered by July 1, 1996 and that 100% of estimated fees are collected.
3. Based on a survey of other states that have similar programs and based on Montana's estimated 8,000 contractors, the following costs are projected: 1.00 FTE program specialist (grade 16), 5.00 FTE compliance specialists (grade 13), and 3.00 FTE administrative support staff (grade 8). Operating costs for the program would be similar to the UEF program costs of \$10,882 per FTE in FY94 (10,882 x 9 = \$97,939). Administrative rule making (35 pages x \$70 = \$2,450); 9 sets of office desks, chairs, file cabinets, book cases, computer hutches, computer software for \$26,631; PCs and a printer would total \$30,404. Operating costs in FY96 are calculated at 75% of this assumption because of the October 1, 1995 effective date with the exception of the one time only costs.
4. Hearings and legal proceedings must be timely because the contracted work stops until a resolution is reached. The hearings must be held in the county where the infraction occurred.
5. The Legal/Centralized Services Division within the Department of Labor and Industry assumes that an additional 60 hearings per year would occur. This workload requires 2.00 FTE hearings officers (grade 16) and 1.00 FTE attorney (grade 17). Operating costs for the legal area would be \$25,706 in FY96 and \$27,767 in FY97 plus one-time operating costs of \$7,623 in FY96 only and equipment of \$17,854 in FY96 only. Operating costs in FY96 are calculated at 75% of this assumption because of the October 1, 1995 effective date with the exception of the one time only costs.
6. While some revenue would occur from the \$10 handling charge with claims against the surety bonds, this revenue is not quantifiable and is not included as revenue in this fiscal note.
7. Although this legislation is effective 10-1-95, some program costs will begin 10-1-95 so that all aspects are operational on 7-1-96.
8. Each contractor will register with the department on or before July 1, 1996, which is the first day of FY97.

(continued)

 2-17-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

GARY FORRESTER, PRIMARY SPONSOR DATE

Fiscal Note for SB0354, as introduced

SB 354

(continued)

9. With an implementation date of July 1, 1996, fees needed for program costs may not be available early in FY96, thereby leaving the department with insufficient state special revenue for implementation of this act during FY96. Costs identified in the following tables reflect total program costs to fully implement the provisions of this act. With insufficient fees projected to be collected, the department will attempt to reduce expenditures and to meet the requirements of this act within available resources.
10. There will be an indeterminate effect on the Unemployment Insurance Trust Fund, due to voluntary compliance.

FISCAL IMPACT:Expenditures:

Dept of Labor & Industry	<u>FY96</u>	<u>FY97</u>
Employment Relations Division (04)	<u>Difference</u>	<u>Difference</u>
FTE	6.75	9.00
Personal Services	179,597	239,462
Operating	102,535	97,939
Equipment	<u>30,404</u>	<u>0</u>
Total	312,536	337,401

Legal Services Program (06)

FTE	2.25	3.00
Personal Services	83,948	111,931
Operating	27,203	27,767
Equipment	<u>17,854</u>	<u>0</u>
Total	129,005	139,698

TOTAL FOR DEPARTMENT

FTE	9.00	12.00
Expenditures	441,541	477,099

Funding:

State Special Revenue (02)	400,000	400,000
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Revenues:

State Special Revenue (02)	400,000	400,000
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Net Impact:

State Special Revenue (02)	(41,541)	(77,099)
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TECHNICAL NOTES:

1. Section 4 (f) (iii). Application for registration - grounds for denial. This section identifies the type of entity, but does not include limited liability companies. Limited liability companies should be included because LLCs are a legal business entity not listed in this section.
2. Section 8 and Section 11. If there are about 8,000 contractors in Montana, based on Dept of Commerce data, \$50 is not adequate to cover the costs of this program, especially if all penalties accrue to the general fund. The department recommends that the registration fees be increased to \$70, which would be enough revenue to cover the program based on the assumption that there are 8,000 contractors in the state.
3. Section 31. Would state agencies (i.e. UI Division within Dept of Labor & Industry, Dept of Revenue) be required to post the \$10 handling fee?

(continued)

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

No.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

To keep the funds distinct from other funds so that the money collected would be spent only for these specific purposes.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? ☐ Yes ☐ No (if no, explain)

This source of revenue is JUST being established.

- d) Does the need for this state special revenue provision still exist? ☐ Yes ☐ No (Explain)

This state special revenue is JUST being established.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

This dedicated revenue falls short of fulfilling the purpose of a Contractor Registration program.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

Statewide Budgeting and Accounting System would account for this program and its dedicated revenue.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on February 18, 1995, at
1:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused:

Sen. Steve Benedict (R)
Sen. James H. "Jim" Burnett (R)
Sen. Larry L. Baer (R)

Members Absent: No members were absent.

Staff Present: Eddy McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 348, SB 354, SB 384

Executive Action: SB 348, SB 375, SB 354, SB 384,
SB 374, SB 110

{Tape: One; Side: One}

HEARING ON SB 348

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, Big Timber, MT, SD 13, stated SB 348 deals with the tax Workers' Compensation insurers pay to fund the Department of Labor's budget. Specifically, the monies go for administering the Work Comp program. All insurers pay the tax. For FY 95, the amount was approximately \$4M. The Department sets the budget and passes on the cost to the insurers by levying the tax. There is no limit on the Department's budget and the increases are reflected on the increases of the tax. The amount reflects an unfunded mandate. The bill was intended to limit the

HEARING ON SB 354Opening Statement by Sponsor:

SENATOR GARY FORRESTER, SD 8, stated SB 354 originated from extensive research and answers a lot of questions, such as Workers' Compensation emerging issues, independent contractors, contractor licensing, and employee leasing issues. An interim committee was established by HJR 33 to address emerging issues expected to be raised in the 1995 Legislative session. The subcommittee seized the educational opportunity to learn about the problems, hear the requests, listen to testimony from interested persons; and to encourage solutions. SENATOR FORRESTER stated he participated in the study. He is also an independent contractor. Cost will be the price of regulation within the industry, although the cost is not excessive. The HJR produced data that reported 90 percent of the industry's problems are the independent contractor's problems. SENATOR FORRESTER stated, even though he did not vote for the 1993, HB 470 legislation, he did not just say "no". The legislation is almost identical to the Washington State legislation. SENATOR FORRESTER stated he worked on SB 354 for many hours and worked with every interested person or group he could. Although, some people would say they are not satisfied. SENATOR FORRESTER stated he wanted the committee to understand he would continue to work hard in order to make SB 354 work. Senate Bill 354 is the first step.

Proponents' Testimony:

Jim Kembel, representing the city of Billings, stated the city received numerous independent contractor's complaints regarding shoddy and unsatisfactory workmanship, especially in times of hail storm disasters. Customers were damaged severely by the new contractors in town for the hail storm damage business. The contractor may or may not have been properly qualified. The cost of correcting the problems cost thousands of dollars. Senate Bill 354 may not be the total solution, but it is a start in the right direction. In the future, the legislature should look at training programs and licensing measures. Perhaps a licensing board similar to the plumbing and electrical boards would be appropriate. At the very least, the legislature should start now, before it is too late (EXHIBIT 3).

Former Representative Jerry Driscoll, representing Montana Building and Production Trades Council, Billings, MT, stated support for SB 354. Since 1977, there has been legislation to correct the independent contractors problems. Each session has made a little bit of progress, but this session should produce legislative results and move closer to solving the problems.

David Owen, Montana Chamber of Commerce, Helena, MT, stated the Chamber does not have a lot of home builder members, but the Chamber represents approximately 800 businesses that have "paid

through the noise" for Workers' Compensation Insurance. Many members have supported past legislation. Since, costs have gone up, and more rules have been inflicted to correct problems in other areas. The independent contractors problem has been one area that appeared to be elusive. On behalf of businesses paying high rates for Workers' Compensation Insurance, something must be done. Mr. Owen encouraged the committee to start the solution process.

Darrell Holzer, MT State AFL-CIO, stated SB 354 is a definite step in the right direction. The cost factors to meet the requirements are minimal. The only people who could be opposed to the legislation are the "bad people", who made the legislation necessary in the first place.

George Wood, Executive Director, Montana Self Insurers Association, stated support for the legislation. The association members think SB 354 is a good first step in getting a handle on the independent contractor problem. Mr. Wood encouraged the committee to pass SB 354.

Mr. Charles Brooks, representing the Montana Food distributors Association, Independent Grocers and their suppliers, stated the association members employ contractors to build entire building complexes and to remodel existing structures. Association members think that SENATOR FORRESTER'S legislation is the place to start solving the independent contractors problems. Mr. Brooks described a personal situation involving an independent contractor. Although the main contractor assured Mr. Brooks that everyone working to remodel his recreational home was covered under Workers' Compensation Insurance, that was not the case. A subcontractor fell off the roof and Mr. Brooks received a call from the Workers' Compensation Division, wanting policy information. Fortunately, the main contractor had proper coverage, and the subcontractor was included under the contractor's policy, but legal fees incurred. Senate Bill 384 would work to correct such problems; therefore, the legislation takes a step in the right direction. Mr. Brooks urged the committee to pass SB 354.

Jacqueline Lenmark, representing the American Insurance Association and representing Greg Van Horssen, State Farm Insurance, expressed thanks to SENATOR FORRESTER for presenting SB 354 for corrective action. Ms. Lenmark urged the committee to pass SB 354.

Chuck Hunter, Department of Labor and Industry, stated conceptual support for SB 354. There are many independent contractor problems that have been around for years. The numbers are increasing and the problems are getting worse. For example, in 1994, the Department received almost 1,900 plus exemption applications. The figure is in contrast to earlier data: In 1990, 500; in 1991, 600; in 1992, 1,000, and in 1994, 1,500. Currently, in the uninsured program there are 255 construction

related cases, and 89 are cases involving independent contractor issues. The underinsurance program has 269 active cases, and 58 have independent contractor issues, involving \$48K in outstanding penalties. The independent contractor issues are two fold, the exemption process and the contractors, who may be independent contractors, but are not independent contractor exempt. The rules that apply in both cases are very much alike. The independent contractor has to pass the "AB" test; be free from the direction and control of the employer working board; and be independently established as a pre-occupational business. The process is a paper process, and people learn to submit the "right" answers to get exemption status. The Department acknowledged positive concepts, which have been outlined in the SB 354 legislation. The annual registration process, making registration a yearly event, rather than an exemption that lasts forever. There are meaningful requirements to enter the program, such as fees and bonds. Field enforcement is a positive step, since many independent contractors related problems exist for a short period of time only. The problems are reviewed/seen after the fact. The problems cannot be corrected while they are taking place. The Department of Labor suggested the complicated enforcement process be made less complicated and easier to enforce.

Vernon R. Zickefoose, Independent Contractor, Billings, MT, stated he is primarily a subcontractor dealing with other contractors and the public, but acknowledged worth in SB 384. Mr. Zickefoose urged the committee to support SB 354.

Sheldon Eaton, Eaton And Yost Construction, Billings, MT offered written support of SB 354 (EXHIBIT 4).

Scott Myers, President of Myers Custom Homes, Inc., offered written support of SB 354 (EXHIBIT 5).

Will Suralski, Mid Valley Drywall, offered written support of SB 354 (EXHIBIT 6).

Charles Dyle, Dyle Construction Co, offered written support of SB 354 (EXHIBIT 7).

Gerald Seeley and Don Hunter, Concrete Construction Company, Billings, MT, offered written support of SB 354 (EXHIBIT 8).

James F. Haar, President, High Tech Construction, Billings, MT, offered written support of SB 354 (EXHIBIT 9).

S. Kummerfeldt Construction, Billings MT, offered written support and concerns about SB 354 (EXHIBIT 10).

Fred Stevenson, Prestige Homes, Billings, MT, offered written support of SB 354 (EXHIBIT 11).

Kraig Kincaid, Kincaid Drywall, Billings, MT, offered written support of SB 354 (EXHIBIT 12).

Al Schaff, Air Controls Heating, Air Conditioning and Refrigeration, Bozeman, Billings, and Livingston, MT, offered written support of SB 354 (EXHIBIT 13).

Butch Bailey, Bailey Masonry, Inc, Billings, MT, offered written support of SB 354 (EXHIBIT 14).

Star Service, Inc, Mechanical Contractors, Billings, MT, offered written support of SB 354 (EXHIBIT 15).

Richard A. Miller, Rich's Modern Flooring, Billings, MT, offered written support of SB 354 (EXHIBIT 16).

Opponents' Testimony:

Chris Racicot, Executive Officer, Montana Building Industry Association, Helena, MT, stated for the committee's benefit, it was necessary to clarify the difference between registration and a licensed program. The difference is the competency requirements. Entrance exams and continuing education requirements are necessary for a licensing program. The concept of licensing and registration has merit, if done properly. The proposed legislation has not addressed the issue properly, nor has it had the input from the independent contractor industry, in any manner. SB 354 has been touted as the answer to the existing independent contractor Workers' Compensation issues. The construction industry has been completely precluded from the bill development process. Only one person in Montana had input into the Washington-based law deliberations. If the issue was about public health or safety, the legislation would still be inappropriate. The bill was introduced one week ago and afforded the industry members only a short period of time to review. Mr. Racicot stated "un-involvement" is not a good way to form public policy, especially since the Washington based law is severely flawed. Mr. Racicot read correspondence from the Washington Building Industry Association's Executive Director. Mr. Tom McCabe wrote, "Today, after 25 years with this law and many amendments, over 30 percent of the contractors are not registered. Over 30% of the claims, filed in the construction industry, come from employees of unregistered contractors. Registered contractors pay premiums, that are 30% too high." Senate Bill 354 would penalize legitimate people, unless there is a "policeman" on every single construction site. From an enforcement perspective, the Department will not financially be able to review all independent contractors. The concept of licensing and registration is not new to the building industry, especially not new to the MBIA. The MBIA has commissioned a state wide licensing committee, with representatives from local chapters, to study the issue. They have been cooperating with other interested organizations. The organizations include MT Contractors Association, the Assurity Industry of MT, the

Departments of Commerce and Labor, State Fund, and city and local governments. The issue demands time and deliberations because of the complicated and detailed issues. Montana industries must be part of the process (EXHIBITS 17 & 18).

Mr. Racicot stated in reference to the title, SB 384 does not address the independent contractor exemption issue in any way, except for in the title. In fact, SB 354 may create a conflict within the law, under the new section 4. The location of the program is another issue. The legislation proposes to locate the program in the Department of Labor; however, the administrative government agency needs to be a pro-business agency, familiar with professional occupational licensing, administration and enforcement. The Professional Occupational Licensing Division (POL) is familiar with licensing, and the division is set up for the administrative, legal, investigative and enforcement challenges necessary. Section 3 and 15 are also areas of concern. The only way to enforce the two sections is through the office of the county attorney. The association members do not believe the Labor Department would be a successful route of enforcement. The POL boards have experience, but only a very small percent of offenders get prosecuted.

Mr. Racicot stated if the legislation is routed through the administrative hearing process in the Attorney Generals Office, and the Attorney General's office act on behalf of the Department of Labor as hearing examiners, the number of cases would severely tie up the Justice Legal Service Division. Cost would be approximately \$43 per hour, or approximately \$2,000 for just the hearing examiners per case. The assurity bond "carrot" would have the public's interest, and they, in turn, would be sure to pursue the assurity aspect. Senate Bill 354 is an administrative nightmare. Each registrant would have to renew at different times per year, rather than the Department having one renewal date, with a grace period. To illustrate, one contractor would be good for a year, another contractor, might have a bond good for six months, but the fee requirement would be the same for an entire year. The section that sets issuance, renewal and registration monies, derives \$50 per contractor, for an estimated \$400,000. The amount is far below what effective enforcement would cost. Senate Bill 354 does not combine or abolish the present public contractor license program, which is an excise tax. The tax is responsible for putting \$255,000 into the General Fund annually. Senate Bill 354 does not address the public education program to teach people about their responsibilities when they deal with the construction industry.

Mr. Racicot explained the MBIA have produced a consumer based publication to inform about public responsibility. Senate Bill 354 does not protect the public, only educates. Texas, along with 18 states do not have licensing programs or regulations; yet those states function without legislation. Most problems between consumer and the construction industry are the big contract problems. It will be difficult to protect consumer from

unprofessional business practice when the public is unwilling to educate and protect themselves. Education is necessary. Senate Bill 384 opens the door for more regulations but does not protect the legitimate operator or consumer. It makes no sense in an era of less regulated government and less spending to impose another useless program on an industry, without input. The bill makes everybody have to have Workers' Compensation Insurance. If there are problems with the Workers' Compensation System, specifically address those problems, but do not blanket the whole industry with registration without input. The association is not opposed to regulations. Ongoing discussion on such issues have been a reality. The industry membership wants to be part of the policy dialogue. Dialogue needs to be done outside the legislature, not during the heat of a session, with only one week to cut a deal before transmittal. Problems are not with current law, problems are with noncompliance. It is difficult to do anything with contractors who do not comply with the law. Mr. Racicot urged the committee to defeat SB 354.

Stan Helgeson, home builder, President of MT Building Industries Association, Billings, MT, stated the association represents approximately one thousand businesses in the housing and light construction industry. Association members do not support SB 384 for a number of reasons. The bill is confusing, at best, and for the short time allotted, it would not be feasible to "make" the bill workable. Mr. Helgeson thanks SENATOR FORRESTER for bringing the issue to the forefront. The MBIA generally favors some form of licensing/registration. The association have taken steps to develop an adequate and fair licensing and registration program. To develop a correct program, time is needed. Members intend to work with MBIA, other interested people, and legislators to develop and ready proposals for the next session. The first time members viewed the bill was Monday, this week. Mr. Helgeson stated he viewed the legislation as a nuisance bill, one that legitimate contractors will have to comply with, but will receive little or no benefits. In the field discussions, contractors generally favor licensing, if it is done right and it means something. Legitimate contractors are in favor of consumer protection; They know if one contractor defrauds the public, the whole industry suffers. Mr. Helgeson asked the committee to oppose the entire bill and let the building industry and other construction leaders to develop a more comprehensive and equitable program.

Mr. Helgeson stated Mr. Kembel gave earlier testimony which alluded to favorable legislation. That is not the case. Mr. Helgeson stated he had a conversation with Billings City Building Department officials, as well as the Public Works Director. They are not in favor, but will work with association members to produce a more comprehensive bill. Another conversation with the Executive Director of the Billings Chamber of Commerce was not favorable.

Bob Durand, Montana Building Industry Association, reported he has a 24 year affiliation with the construction industry and is a licensed contract bonds person, currently working as a business consultant, stated he reviewed the assurity issue at Mr. Racicot's request. The general purpose of the law is to afford public protection from unreliable, fraudulent, financially irresponsible or incompetent contractors. Assurity bonds mean protection. Section 5 calls for a bond, \$6,000 for general contractors, and \$4,000 for specialty trades. Section 13 references contracts from \$1K to \$60K, but does not reference contracts in excess of \$60K. Mr. Durand stated the language is misleading. There is only one \$6K bond, and even if that bond was raised to a higher level; the bill was enacted and all was approved for the construction, the bond would not be effective or reliable. All projects would be at risk, and all of the contractor's previous customers would be at risk, if a claim against the single \$6K was submitted. Mr. Durand submitted written testimony, which supported his verbal testimony (EXHIBIT 19). In addition, the \$4K requirement for hail storm damage is deficient. Any out-of-state contractor can enter the state and complete approximately 20 to 30 hail damage jobs, but there would only be one \$4K bond. The higher the bond penalty is another nebulous situation. There are assurity companies who would consider the \$4K to be the construction licensing and permit bond amount. In addition, there is a second bond requirement. There are two bonds per contractor. The second contract is to protect the employee. The bond requirements will have bonding companies spend more time underwriting. The language talks about assurity must be listed in the suit. Washington state law had a set amount for major contracts in the blanket proponent fund, which was difficult to rid. Mr. Durand stated a contract licensing program is needed, but is premature. Mr. Durand stated he does not have the luxury of making final decisions in his business without doing all the homework. He suggested the legislature gather assurity information from surrounding states, including Oregon and Washington. Input is critical. Homework is essential

David Cogley, Builder, Helena, MT, stated SB 384 has been taunted as the first step solution for independent contractors. As the bill reads, registration requirement is to show proof of Workers' Compensation Insurance coverage. There are other provisions of Workers' Compensation laws that provide exemptions. There are certain kinds of exemptions for people depending on how business is done, such as sole proprietor, independent contractor, and so forth. It was not SENATOR FORRESTER'S intent that the exemptions be precluded by SB 354. Mr. Cogley stated he is going to offer an amendment to clarify that the contractors only need to prove the class of Workers' Compensation Law and compliance with unemployment insurance law. That it, the contractors will either show coverage or show exempt status.

Bill Pierce, Home Builder, Helena, MT, stated opposition to SB 354.

Andy Skinner, licensed home builder for 30 years, stated verbatim, "The consumers can't be protected by laws, like we are trying to do. This is a legal thing that is in the contract. You can't make a level playing field, as the bill says, you upset the checks and balances."

Tim Dean, Building Contractor, Bozeman, MT stated opposition to SB 354.

Myles M. Egan, Billings Association of Realtors, stated opposition to SB 354.

Jeff Engel, Home Builder, Billings, MT stated opposition to SB 354.

Bob Ross, Building Contractor, Kalispell, MT, stated opposition to SB 354 in the current form.

Stan Helgeson, President of Home Builders Association, Billings, MT, stated that the association opposes SB 354.

Darwin Nisson, Dynamark Security Center, a security arm insulation, a highly regulated business and assurity bonded, stated opposition to SB 354.

Gay A. Rye, Executive Officer, Home Builders Association, Billings, MT, stated the 165 membership is strongly opposed to SB 354 (EXHIBIT 20).

Pat Ford, Home Builder, Helena, MT, urged opposition to SB 354.

Hardy Edmonson, Vice-president Building Association, Bozeman, MT. stated opposition to SB 354.

John Agnew, Western States Insurance, Bigfork, MT, offered written testimony against SB 354 (EXHIBIT 21).

Questions From Committee Members and Responses:

There were no questions from the committee.

Closing by Sponsor:

SENATOR FORRESTER told the committee that it is amazing that the independent contractors have been "excluded". SENATOR FORRESTER stated Chris Racicot's name had been "excluded". SENATOR FORRESTER stated Chris Racicot's name has been included in correspondence. (SENATOR FORRESTER held up documents in front of the committee so they could see the actual correspondence.) SENATOR FORRESTER wanted to know how Chris Racicot was excluded. SENATOR FORRESTER stated he received a letter from Chris Racicot two weeks ago, before the bill came out to say Chris Racicot was totally opposed to the bill. That is when Mr. Racicot became "opposed" to the legislation. SENATOR FORRESTER stated he talked

with Stan Helgeson, although he testified, he and others were left out. SENATOR FORRESTER stated he met with Carl Schweitzer, Greg Hardy, and five or six other Billings people at the Sheraton Hotel. Jeff Angles was at the Sheraton, yet he and the others claimed to be left out. They said they wanted "left in the loop", and two weeks later they send SENATOR FORRESTER a letter stating they want out, not only are they going to oppose the bill, but they are strongly opposed to the bill, without reading it. SENATOR FORRESTER stated he is part of the industry, and "ready Proud" that the opponents "really wanted to work with me." SENATOR FORRESTER stated he worked with the Chamber of Commerce and attended meetings, as well as other meetings. The MBIA has nerve to testify that SENATOR FORRESTER didn't work with the Independent contractors. SENATOR FORRESTER stated he could not believe the testimony stating cooperation was not offered on either side.

The Association discussed the issue with the Department of Labor. Senate Bill 354 is not a licensing bill. The registration will be handled in the Department of Labor. If the Association is a problem with the Department of Labor, it is a Governor's Department, just like the Commerce Department. The Governor appoints both directors. SENATOR FORRESTER stated he has nothing to do with the directorship appointments. SENATOR FORRESTER stated he asked Chuck Hunter, Department of Labor, yesterday what exactly was the problem. Chuck Hunter replied that he had no realization of the problem. Evidently, the Association did not want the Department of Labor, but wanted the Department of Commerce. SENATOR FORRESTER stated the Commerce Department would be fine, and would be amicable to working with the Department, if they wanted to come back at another time. SENATOR FORRESTER stated the problem cannot go on. It has been going on for fifteen years. Yet, the association wants another two years. They say give them another two years, and they will return to the legislature with a proposal. They have wasted three weeks of the session, already. They wasted the time by not submitting any input. SENATOR FORRESTER stated he actively solicited input. SENATOR FORRESTER stated he cannot make sense of MIBA's Attorney General argument. If the fiscal impact had been several hundred thousand dollars, Mr. Dave Lewis, Budget Director, would have identified and questioned that amount of money.

The Washington version of SB 354 has been in statute and amended several times. SENATOR FORRESTER said he wanted to quote something about the construction industry. He said, in fact, SENATOR HARP stated in the report (EXHIBIT 20) that there are no wilder, more independent entrepreneur spirit found anywhere else, than in the construction industry. He maintained that SENATOR HARP had said last summer, "to try to regulate internally, is possible." They have to bring in a third party. SENATOR HARP has been interested in Worker's Compensation forever. Since he has been in the legislature, he has been interested in Workers' Compensation issues. SENATOR FORRESTER stated he is angry to have to address the committee in such a

demeanor, that people have accused him of not working with them. The bill is a result of many hours, at least 50 meetings with people wanting input. **SENATOR FORRESTER** stated he worked with the League of Cities and Towns. He removed the language "cities and towns are held liable, if they do not check on the building permit without being encumbered." ...**SENATOR FORRESTER** stated he removed language after he worked with newspaper people and discussed the Washington Bill. The newspaper people said if you advertise in a newspaper and accept an advertisement, the newspaper is guilty. **SENATOR FORRESTER** stated he is willing to work with people and take unwanted language out of the bill, but is not willing to accept accusations of not working together.

Senate Bill 354 is a first step. **SENATOR FORRESTER** called the committee's attention to the Washington MBIA pamphlet (**EXHIBIT 22**). The pamphlet states: "in order for any program to be of value, there needs to be a number of aspects in place to assure that this is not merely another excise tax, similar to the public contract licensing program. One of these areas is the license application process. The following is a sample for an application process that could take place before any general or specialty contractor who could legally have the ability to bid and accept private and public constructions jobs. Annual applications submitted by February 1. The fees commensurable to the costs of the program for a federal specialty contractors.

SENATOR FORRESTER stated the annual proof of liability insurance is not in the bill, but the annual application is. Insurance industry people said they did not like the language, so the language was taken out. The proof of employment insurance Workers' Compensation coverage was an issue, so the exemption language was put in. The annual license card was not included. Homeowners came in two years ago and testified. The idea of a card was rejected. A certificate would suffice. **SENATOR FORRESTER** stated he really thought he could work with these people and come together with amendments to make the legislation work, but the first step is necessary, or in two years, the problems will be the same. If the contractors think that MBIA can work for two years and bring a bill to the legislature for unanimous approval, it is not possible. There will be last minute deadlines anytime a bill of this magnitude is brought to the legislature. There are 29 new sections in the bill. **Chuck Hunter** stated he would work to further SB 354.

CHAIRMAN KEATING stated the Labor Committee will adjourn and will meet for Executive Action upon adjournment. The committee will take Executive Action some time today and interested people should return and be available discussion. **CHAIRMAN KEATING** stated he is hesitant to make a statement, but will make a statement for the record. What the committee and the audience witnessed during the hearing was a heated battle between two groups. **SENATOR KEATING** stated to his knowledge, the substance of the bill was never addressed. He stated he did not hear any particulars regarding the specifics of the bill, only that it was

a good bill and only that it was a bad bill. No one elaborated on what the bill would do. During Executive Action, there will be give and take. SENATOR KEATING stated he hoped the emotions would be held down, and people would talk with sense and logic. The committee needs to thoroughly understand the proposed legislation. CHAIRMAN KEATING stated, in his opinion, the Independent Contractor Bill is absolutely necessary for the coverage of Workers' Compensation for the worker and home owner protection when they hire an independent contractor. There has been too much past abuse, something must be worked out, and done. The meeting was adjourned, until the call of the CHAIR.

The Labor and Employment Relations Committee returned to Room 413/415 at 5:48 P.M.

The meeting was called back to order by CHAIRMAN TOM KEATING. SENATOR CASEY EMERSON was excused.

EXECUTIVE ACTION ON SB 348

Discussion:

Senate Bill 348 was sponsored by SENATOR GROSFIELD, trying to cap the assessment on Plan 1, for the school districts. There are no amendments.

Motion:

SENATOR AKLESTAD moved to table SB 348.

Discussion:

CHAIRMAN KEATING asked if anyone from the State Fund, Plan 1 and Plan 2. CHAIRMAN KEATING stated, for the record, during the testimony it was apparent that the school self-insure plan is one of the largest bodies in the Plan 1 area. They are not represented on the advisory council or on the council that establishes the rates, rules, etc. CHAIRMAN KEATING suggested the committee take note of the fact the self insured school are not on the council. If at some point, that larger group could get representation, it would lead to a settlement. The committee should also be aware of the fact the formula needs to be revisited so everyone is on the same page in regards to establishing rates from some common base.

Vote:

The motion to table SB 348 CARRIED UNANIMOUSLY. SENATOR EMERSON submitted a "Table" vote.

SENATOR WILSON stated he would agree with both SENATORS BARTLETT AND VAN VALKENBURG's assessments. He remembers the 1993 scars of compromise. SENATOR BURNETT stated he was in the 1973 Session when the New Constitution implemented payroll taxes. The assembly was controlled by the Democrats and there was a Democratic Governor. The unions, in tandem with the Democrats slipped everything through.

Vote:

The DO PASS motion for SB 375 PASSED. A roll call vote was taken, with SENATORS BARTLETT, VAN VALKENBURG And WILSON voting NO.

EXECUTIVE ACTION ON SB 354

Discussion:

Ms. McClure stated she distributed the Forrester amendment to the committee members. (EXHIBIT 23). Ms. McClure remarked that SENATOR FORRESTER stated to her that the amendments are just the first of a few amendments that the committee and he could agree on. When the bill goes to the floor, there may be other amendments. The amendment deals with issues commonly brought up in testimony. J. Lenmark proposed the amendment, and SENATOR FORRESTER wanted the amendment changed. One page 3, clarification is made for proof of compliance with Workers' Compensation laws, rather than coverage. They want proof of compliance with unemployment insurance laws. Washington State calls their agents "statutory agents", and Montana calls the agents, "registered agents", and the agents are required. So, the amendment strikes "statutory" and "if any,". SENATOR FORRESTER stated information was brought forward in the fiscal note. The limited liability companies also had to be addressed and that function was taken care of in amendment, number 4. The last amendment is on page 4, line 12. Mr. David Cooley suggested the phrase "or any applicable exemption terminates" is inserted following the word "expires". The certificate is valid until the date the insurance expires "or any applicable exemption terminates". To make it perfectly clear with amendments 1 and 2, that the independent contractors' exemption would be received.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 354, 35401. The amendments were approved by SENATOR FORRESTER.

Vote:

The motion to amend SB 354 CARRIED UNANIMOUSLY.

Discussion:

SENATOR BENEDICT stated he listened to the bill's presentation and a lot of strident discussion. SENATOR BENEDICT stated he had talked with SENATOR FORRESTER as well as members of the contractor's industry. SENATOR BENEDICT stated he was mystified why the sides could not get together, as they both appeared to be going in the same direction. It was difficult to ascertain what they did not like about the bill, other than it was not the independent contractor's bill. SENATOR BENEDICT stated he would like to offer a conceptual amendment, on page 4, line 29, to bring the license fee up to \$70, rather than \$50, and make sure there is enough money in the Special Revenue Account for the license fees. He would also like to make sure no General Fund money is used. If the \$70 is not needed for administration, the fund will build up. The change, if needed, could be made under rule making authority, or they could come to the 1997 Session and request additional funding.

Motion:

SENATOR BENEDICT moved to amend SB 354. Page 4, line 29, strike "\$50" and insert "\$70". Ms. McClure stated she would research the bill to find out if the change has to be made in any other place in the bill.

Discussion:

CHAIRMAN KEATING asked if the bill specifies where the money is supposed to go. SENATOR BENEDICT stated the language says the "money must be deposited under the State's Special Revenue Account to the credit of the Department of Administration.... The bill is very specific. SENATOR VAN VALKENBURG asked what makes the committee think that \$50 is not enough, how was the conclusion reached? SENATOR BENEDICT stated he reviewed the fiscal note. There are about 8,000 contractors in Montana, based on the Department of Commerce's data. Fifty dollars in fees is not adequate to cover the cost of the program, especially if all penalties approved to the General Fund. The Department recommends that the registrations fees be increased to \$70, which would be enough revenue to cover the program, based on the assumption there are 8,000 contractors.

Vote:

The MOTION to AMEND SB 354 CARRIED, with SENATORS AKLESTAD and WILSON voting NO.

Motion:

SENATOR BENEDICT moved SB 354 DO PASS AS AMENDED.

Discussion:

SENATOR AKLESTAD stated what concerns him is that the proponents are very willing to assess a fee. Now the fee has been raised \$20. In most cases, but not all cases, the fee will be on someone else. **SENATOR AKLESTAD** stated he does not know if he agrees with the procedure. There are many disgruntled people and much animosity between the factions because there have not been more proposed agreements. **SENATOR AKLESTAD** questioned the legislation's completeness. **SENATOR BENEDICT** stated he agreed with **SENATOR AKLESTAD**. **SENATOR BENEDICT** stated he read the proposals in the contractors' newsletters, and the proposals went further than the amendment. The contractors do not disagree. The proposal is not theirs, and that is why they disagree. The proposal includes licensing and registration, creates a bigger bureaucracy, and has a lot more rule making authority.

CHAIRMAN KEATING stated the reason he left SB 110 become dormant was to find a better way to legislate the problem. **CHAIRMAN KEATING** stated he tried to protect small employers who were getting stabbed in the back. Those "stabbers" were filing as exempt independent contractors. They would change their minds and "do the stabbing". The testimony demonstrated there are a lot of bucks out there, and they are "hitting" the small employers. The committee heard testimony from a home owner who had gotten clobbered. **CHAIRMAN KEATING** stated that something has to be done to slow down the mess. Senate Bill 354 moves in the correct directions. The committee heard from independent contractors who were in favor of the legislation. **SENATOR KEATING** stated \$50 to \$70 is not a reason to question the purpose of the bill. There is plenty of time for people to work out problems. The bill needs to be refined and adjusted. People who want to be independent contractors will have to provide for their own liability. They will not be able to "stick" someone else. This is the purpose of the legislation.

SENATOR VAN VALKENBURG asked how the bill applies to a contractor who does not have employees, but works only on his/her own. **SENATOR FORRESTER**, replied that each independent contractor would register with the Department of Labor, and would have to declare whether they would be covered under State Fund or if they would seek an exempted independent contractor status. At that point, they would furnish a bond to the Department of Labor and would declare up to two recognized trades. The Department of Labor would issue the AB test. **SENATOR VAN VALKENBURG** asked about a carpenter who build decks, does that person have to register? **SENATOR FORRESTER** said one section applies to the "the brother-in-law built" deck. A causal-manner work description is used for work done under the policy holder insurance, and the contract is not needed. The brother-in-law, under existing law, is in the business of building deck, would have to register, etc. **SENATOR VAN VALKENBURG** stated he tended to agree that there ought to be state agency responsibility, rather than county attorney based

responsibility. SENATOR VAN VALKENBURG stated he will work with SENATOR FORRESTER and others to hone SB 354.

Vote:

The DO PASS AS AMENDED motion for SB 354 PASSED with SENATORS BAER, EMERSON and AKLESTAD voting NO.

EXECUTIVE ACTION ON SB 384

Discussion:

Ms. McClure stated the amendment goes along with the Gray Bill (EXHIBIT 23). CHAIRMAN KEATING stated the starting point for SB 384 is the Gray Bill.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 384 (38401) (EXHIBIT 24).

Discussion:

Ms. McClure explained SB 384 and SB 374 addresses some of the questions raised in committee by proponents and opponents, primarily to coordinate the two bills. The amendments do not change the substance of the bill. There is an amendment on both bills, 39712316. As introduced, the amendments conflicted. The amendments now match. The language talks about a designated advisory organization. In SB 374, a rating organization was acknowledged. Page 9, sub 1, the Gray Bill says "everyone is required to be a member of licensed, advisory organization or a licensed rating organization. Testimony on SB 374 talked about optional membership by the State Fund. So, 39712316 would look the same in both bills. "Advisory" will be deleted to include rating, and it will be designated.

Page 19 of the Gray Bill, the amendment originated by SENATOR HARP's concern about who can get a copy of loss records, Amendment 15. The amendments are bolded and capped. Designated people, only, get the information. Permission must be obtained for the businessperson CHAIRMAN KEATING asked who can get the payroll and loss run information. Ms. Lenmark stated the only entities who can get the information without getting permission are a licensed producer, which is the insurance agent, or a Plan 2 carrier, or a Plan 3 carrier without the State Fund. Anyone else would have to get written permission.

Page 20 dealt with the "an advisory" insertion. Page 22 brought in a new section, Section 19. Part 4 will be a rating organization if Part 4 is applicable. It will be an "advisory organization" if Part 10 is applicable, upon codification. The underlined information is existing law. CHAIRMAN KEATING asked Mr. Kaleczyc how the rating organization setup will work and who is subject to what. Mr. Kaleczyc replied each year under the

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE _____

February 18, 1925

[illegible]

SEN:1995
wp.rollcall.man
CS-09



CITY OF BILLINGS

OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433

FAX (406) 657-8390

EMAIL: msWatson @ billings.lib.mt.us



February 17, 1995

SENATE LABOR & CIVIL RIGHTS

LEGISLATIVE NO. 3

DATE February 18, 1995

BILL NO. SB 354

W. Jim Kembel
1100 Knight Street
Helena, Montana 59601

RE: SENATE BILL 354

Dear Jim:

I have reviewed the provisions of Senate Bill 354 as submitted by Senator Forrester. The bill proposes a self-funding registration program for contractors in the State of Montana.

The City of Billings has received consistent inquiries by its citizens for enforcement of City standards as it pertains to irresponsible contractors. Most contractors perform work in a responsible manner. However, others are the cause of shoddy workmanship and unsatisfactory performance for the citizens of this community. For example, recent hail storms caused a rash of roofing contractors to appear in our community. Some of those contractors have cost our residents thousands of dollars for improperly installed roofing.

The proposal of Senator Forrester provides for a registration of contractors and appropriate bonding. The registration mechanism supervised through the state may or may not affect the problem of faulty workmanship from irresponsible or incompetent contractors.

It is a start that the City of Billings believes would provide a long term registration program of legitimate contractors but address a long term intent of testing and training legitimate contractors. Senate Bill 354 should be seriously examined.

Sincerely,

Mark S. Watson
City Administrator

MSW:bm

Billings Pride
City-wide

2510 GRAND AVE.
BILLINGS, MONTANA 59102



YOUR QUALITY BUILDER

SENATE EXHIBIT NO. 4
DATE Feb. 18, 1995
BILL NO. SB354

(406) 259-4610
(406) 259-4768

2-17-95

I support Senate Bill # 354
and ask you to do the same.

Sincerely,

SHERDON EATON

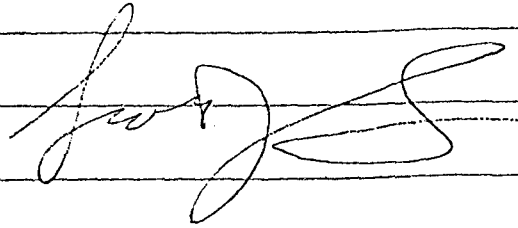
SENATE CLERK
EXHIBIT NO. 5
DATE Feb 18, 1995
BILL NO. SB 354

Feb 17, 1995

TO Chairperson for Committee on SB 354

I Scott MYERS, president of Myers Custom Homes Inc,
Support the Above bill.

Sincerely

A handwritten signature in cursive script, appearing to read "Scott Myers", with a large, stylized flourish at the end.

DATE Feb 18, 1995BILL NO. SB 354

To

j

HAVING read Senate Bill # 354, I must say that this bill is a positive step forward in improving the workers compensation crisis facing the state of Montana.

For too long sub-contractors like myself have been victimized by illegal, fly-by-night operators calling themselves legitimate contractors who refuse to provide for their employees. Workers compensation costs money, real money. I can recall many times when my wife, who kept our books, would be literally in tears asking where we were going to get the money to pay workers compensation bills. At the same time, these other "contractors" were receiving the same money for jobs as I was and were able to pocket a rather substantial hunk of cash. ~~the~~ The bottom ~~line~~ line is; competitive forces kept my prices at the level of ~~my~~ my competitors but they were at an unfair advantage because I felt that my employees were important and deserved to be covered in case of an industrial accident.

Montana needs this bill! Make this bill law and then enforce the law! Don't pass this bill with no teeth however. A law without enforcement is worse than no law. I would suggest that you register all contractors and sub-contractors, then hire enough people to examine and enforce the provisions of this bill. The state needs to get all employers under the Workers Compensation umbrella so the fund can expand its base and hopefully lower rates for all employers.

Thank you.

Will Suraski
owner: Mid Valley Drywall
Workers Compensation # 3-1219-11-5

Feb. 17, 1995

DATE Feb 18, 1995
BILL NO. SB 354

Dears Sirs:

I would like to put My Support behind SB354
I see a need to stop the problem of People
working as employers without the proper protection
for their employees. Workers Comp. Liability Ins.
etc. I would like to see provision in the
rules for Bidding and Contracting, even in
the event of Court Action by a customer.

Sincerely,

Dyke Cont. Co.

Charles J. Dyke

Concrete Construction Company
P.O. Box 30623
Billings, Mt. 59107

To: Senate Committee

From: Gerald Seeley and Don Hunter

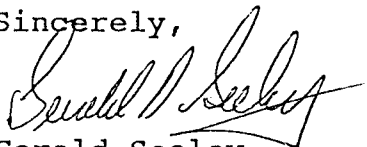
Re: SB354

February 17, 1995

To whom it may concern,

As the owner of Concrete Construction Company I would like to urge you to support senate bill 354 if under the Notice to Customer it includes Workmans Compensation data and also Liability Insurance information.

Sincerely,



Gerald Seeley
Owner

HIGH

TECH
CONSTRUCTION

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE Feb 18, 1995
BILL NO. SB 354

February 15, 1995

TO WHOM IT MAY CONCERN:

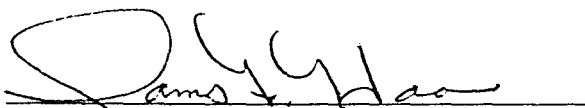
HIGH TECH CONSTRUCTION wants to go on record as supporting Senate Bill #354. This bill is a necessity to protect the private sector from liens, negligent work and breach of contract problems. This bill is needed to make sure all contractors are in compliance with laws governing Workers' Compensation coverage and Unemployment Insurance coverage.

This bill will protect the public from unreliable, financially irresponsible and independent contractors. It will also put all contractors on a "level playing field" during the bid process on contracts.

Please support Senate Bill #354 by voting "YES".

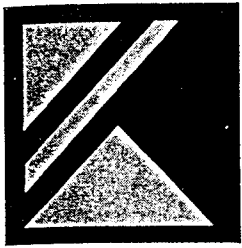
Cordially yours,

HIGH TECH CONSTRUCTION



James F. Haar, President

JFH/cic



KUMMERFELDT CONSTRUCTION
QUALITY BUILDERS • LICENSED CONTRACTOR
3129 Conestoga Way RR #11
BILLINGS, MONTANA 59105
(406) 252-4408

SENATE LABOR & EMPLOYMENT
ENROLL NO. 10
DATE February 18, 1999
BILL NO. SB 354

Regarding House bill 354

I support the intent & all that is covered in the statement of intent. & I understand that the intent is there however I have some grave concerns

- 1) I feel that everybody should carry their own liability insurance & it should only be up to the general to make sure that they have proof - NOT responsibility to pay
- 2) The cost of the general to BOND everything would put a lot of jobs & companies out of business. I do 60% remodeling & every month up to 20 jobs my cost for bonding as a general would put me out of business - I feel great for Sub contractors only.
- 3) Disclosure Statement needs adjustment & proofs of liens & actual work needs to be clarified
- 4) I don't like it I like the FRINGE

benefits statements were about. Major concern there as a general contractor

We need protection for the illegal subs NOT more pressure & money on the general contractor

I'd like to keep informed.

Shant Kummerfeldt

PRESTIGE HOMES
Fred & Carol Stevenson
3300 Alexander Road
Billings, MT 59105
259-9771

I would like to address Senate Bill #354

I am, generally, in favor of the Bill. However, I think there are a few areas in which it does not go far enough.

1 In order to obtain a Contractors License, there should be some kind of documentation to prove that the contractor is qualified to do the job and some kind of continuing education program.

2 Regarding bonding, there should be an appeals board or arbitration board, so that small claims do not get costly or over looked.

3 There should be some manner of enforcement that would make it mandatory to use Licensed Contractors for all construction. A home owner could build on his own house, but, any hired work should be done by a Licensed Contractor.

4 There should be an on-going education for the general public regarding how to use a Licensed Contractor. There should also be education on mandatory reporting of the cost of the job, similar to a Form 1099, for income tax purposes. (Many small jobs are not reported for state or federal taxes.)

5 This licensing should be under the Department of Commerce.

I feel the licensing of Contractors is important. It should be looked at more carefully and made more efficient for multiple purposes. Things it should address more thoroughly are Workers Compensation and Independent Contractor exemptions.

Thank you for considering my views.

Fred W. Stevenson
Fred W. Stevenson

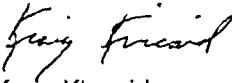
SLIP
EXHIBIT NO. 12
DATE Feb 18, 1995
BILL NO. SB 354

February 17, 1995
3335 John O'Groats Ct.
Billings, MT 59101

Gentlemen:

I support Senate Bill #354 and ask you to do the same.

Sincerely,


Craig Kincaid

Owner, Kincaid Drywall



FEBRUARY 16, 1995

SUBJECT: SENATE BILL #354

DEAR COMMITTEE MEMBERS,

WE ARE IN SUPPORT OF SENATE BILL #354 AND WOULD ALSO HOPE ALONG WITH THIS BILL THE RULES WOULD INCLUDE LIABILITY & WORKMAN'S COMP. INSURANCE REQUIREMENTS. WE FEEL THIS WOULD GO FAR IN PROTECTING THE GENERAL PUBLIC OVERALL. WE THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,

AL SCHAFF

AIR CONTROLS CO., INC.

Bailey Masonry Inc

3243 Latigo

Phone 259-7410

Billings, Montana 59105-4697

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 14

DATE Feb 18, 1995

BILL NO. SB 354

To Whom IT May Concern

I would Like To endorse Senate Bill 354

and would encourage you To do The Same

Thank You
Butch Bailey

Star Service, Inc.

Mechanical Contractors

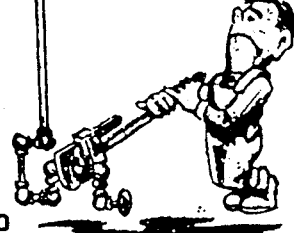
26 SOUTH 24TH STREET

P.O. BOX 1560

BILLINGS, MONTANA 59103-1560

PHONE: (406) 259-3754

FAX: (406) 258-2420



SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 15

DATE Feb 18, 1995

BILL NO. SB 354

February 17, 1995

Re: SENATE BILL # 354
CONTRACTOR REGISTRATION

Dear Senators:

Star Service, Inc. is a licensed Montana Contractor (License No 1373 A) and as such we favor the above Bill.

Currently Major Contractors, such as ourselves, are forced to comply with Registration Laws, Workers Compensation Laws, Liability Insurance laws, etc. and we feel that it is in the best interest of the public that all who offer contracting services be bound by equal rules.

Thank you for your favorable consideration of this Bill.

Sincerely,
STAR SERVICE, INC.

Plumbing

Heating

Air Conditioning

Industrial Piping

RICH'S MODERN FLOORING

713 MAIN

BILLINGS, MONTANA 59105

248-3656

RESIDENTIAL AND COMMERCIAL

WALL TO WALL CARPET — RUGS — LINOLEUM — TILE — DRAPERY

February 17, 1995

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 16

DATE Feb 18, 1995

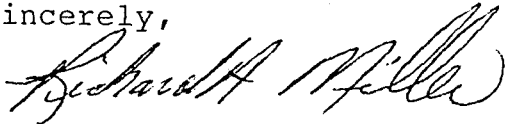
BILL NO. SB 354

Senate Committee

To Whom It May Concern:

We are in support of Senate Bill #354.

Sincerely,



Richard A. Miller

TESTIMONY ON SENATE BILL 354

Mr. Chairman and members of the committee my name is Bob Durand.

I have been affiliated in the surety industry for 24 years and have been active in underwriting contractor for contract and license bonds for that time. I am currently doing business consulting/surety.

I have been asked to review Senate Bill 354 by Chris Racicot of the Montana Building Industry Association for my input and to share my opinions as the bill required surety bonds. I will go through some of the section of this bill and offer my views.

SECTION 1 - Purpose is to afford protection to the public from unreliable fraudulent, financially irresponsible or incompetent contractors.

- This type of protection require the state or regulating body to not only license contractors working the in the state of Montana but also to investigate the contractors similarity to how a surety company would underwrite a contractor. Bonds are not another insurance policy. Bonding can be best compared to high grade financing or qualifying at a bank for a loan. The larger the bond the more difficult it is to qualify. Again the smaller contractor is the one that has the problem qualifying. They need to do a thorough check into the 3 C's of bonding, cash, character and capacity.

- Cash can be verified with appropriate financial information.
- Character reflects on ones knowledge and business traits possible credit referencing.
- Capacity related to past experience in the field acquired knowledge of the industry and the ability to obtain appropriate insurance and surety needs.

All of these issues are noted in Section 4 Application for registration. However, the knowledge and staff to accomplish this task in not in place and needs to be extensive to do the job correctly.

SECTION 13 - Disclosure statement requirement refers to contracts between 1,000 and \$60,000 with no apparent requirements for contracts in excess of \$60,000. The bond requirement in their "notice to customers" is for \$6 M for a general and \$4 M for a

specialty contractor that has been posted with the State of Montana. This may infer that a consumer has protection to \$6 M in the event of claim on his contract. I think this is somewhat misleading for the following reason.

Say we have 10 consumers that have a contract with the same contractor for say \$10 M each and he has slipped by the investigation and licensing process and in fact is not reliable and does not complete his projects. There will be 10 consumers trying to get a part of the \$6,000. Really not much is available to each of them. Then when we get to the specialty trades were less may be available as that is only \$4, 000. Let me take this one step further and say these contractors are unable to obtain a surety bond. They then need to place a cash or other type of property bond with the state. This cash bond could dilute the contractors working capital and help in his demise as he does not have all of his cash available to pay subcontractors or suppliers.

Just a couple of examples here that might clarify this:

Lets take roofing contractors. Say we have a heavy hail year where our existing instate contractors cannot complete the needed work in a reasonable time. This will entice out of state contractors to flood into Montana and soak up the excess. Say each of these contractors does 20 roofs all unsatisfactorily. The \$4,000 bond requirement for a specialty trade doesn't give much protection to the consumer.

Another problem I observed a number of years ago was in Bozeman. They had a couple of contractors from out of state that specialized in putting on fireplaces to existing houses. The fireplaces they installed were not done to codes and ultimately resulted in fires in a number of those residences. The city of Bozeman attempted to license these contractors and ultimately required a \$10,000 surety bond from these contractors. Not only would sureties not write these bonds but by the time they found that out the contractors had already moved on.

~~SECTION 30 - Appears to require another bond in the same amounts i.e. \$6M for general and \$4M for specialty but for the protection on employees for wage and fringe benefits. So now we have 2 bond requirements, one to protect the consumer for \$6M/4M respectively and one to protect the employee for \$6M/\$4M respectively. Again the contractor can furnish a surety, cash or other securities for a bond. This again may dilute the all important cash a contractor needs for his day to day operations if he has to post a cash bond.~~

~~SECTION 31 (2) - Surety must be named in the suit. This would be unacceptable to any of the sureties I know and preclude them from writing those bonds.~~

The State of Washington has a \$50,000 bond requirement for their

contractors. These bonds are extremely difficult to obtain and are considered only for the large contractors. The smaller contractor who is unable to acquire this bond eliminates their ability to comply to this law. I hear they are having problems with enforcement. This needs to be evaluated.

I do feel the concept for Contractor Licensing in this state is a good one but a bit premature. I also feel that much input needs to be gathered and evaluated prior to implementing a law that may not be enforceable.

I would suggest input be gathered from all surrounding states including Oregon & Washington, the surety industry, the Montana Building Industry and the Montana Contractors Association and evaluated to assist in making the issue workable. The Builders, Contractors and Sureties in Montana are interested in protecting their businesses and reputations. Their input is critical.

A committee needs to be established and funded to evaluate this complicated issue and make their recommendations to all interested parties in making this legislation workable. I would be glad to answer any questions now or after this session

February 15, 1995

Honorable Thomas Keating
Montana State Legislature
Capitol Station
Helena, MT 59620

STANDARD FORM NO. 64
DATE *Feb 18, 1995*
BILL NO. *SB 354*



HOME BUILDERS ASSOCIATION OF BILLINGS

Dear Senator Keating:

The Home Builders Association of Billings would like to request that you oppose Senator Gary Forrester's bill, Senate Bill 354, to require Contractor **REGISTRATION**. Our association and its 183 members, as well as the other five local NAHB affiliates in Montana, are opposed to this legislation for many reasons. It may surprise you to know that we are generally in favor of Contractor **LICENSING** and have begun the research to present a bill to the 1997 Legislature that would require licensing of all contractors and sub-contractors. The time necessary to research and present a piece of legislation that will serve the best interests of the consumers, as well as the building industry, is not available during this session.

In meetings and discussions within our association, our members have targeted several areas of concern that we feel any piece of legislation should address. These concern are:

1. The licensing process should completely monitor workman's compensation, liability insurance and appropriate bonding, plus it should provide reporting of violations or non-compliance for general contractors.
2. There should be an enforcement mechanism with some "teeth" in it. There has to be a strong penalty for non-compliance, but that must be balanced with penalties that are in proportion to the work being done.
3. An arbitration board to determine the legitimacy of claims must be mandatory. This board would deal with claims between the consumers and the general contractors as well as between the general contractors and subcontractors.
4. Enforcement at the local level. In order to obtain a building permit, an applicant would have to provide his license number. Unfortunately, this would not be applicable to individuals building their own homes.
5. The fees collected could only be used to support this program. Fines should be used to offset the cost of investigation and prosecution of violators. Funds should also be generated to allow for public education to use only licensed contractors.



P.O. Box 875 ■ Billings, MT 59103 ■ 406-252-7533

6. The licensing must be administered through the Department of Commerce. This Department currently regulates and oversees most professional licensing and understands the needs of the professionals involved as well as the consumers they are charged with protecting.

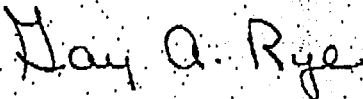
7. Electricians and plumbers should be held to the same standards in reference to Work Comp, liability insurance and bonding requirements. The association feels that there are some areas that are already licensed and the need to coordinate efforts to eliminate double licensing fees needs to be carefully scrutinized.

8. In order to be licensed in construction you should be competent to perform the tasks for which you are licensed. Testing and continuing education must be considered.

Unfortunately, Senator Forester's bill does not address even one of these concerns and is in effect, a tax on the construction industry and its employers. It will not protect consumers, legitimate contractors, or help the Work Comp system because those determined to circumvent the law will be able to come in, do shoddy work at reduced rates, and disappear before overworked County Attorneys or investigators covering large areas can find and prosecute them.

We are asking you to vote against Senate Bill 354 and give the Montana construction industry the time to write legislation that will protect the consumers, legitimate general contractors, subcontractors, and not impose a financial burden on the state, the construction industry, and the home buyers in Montana.

Sincerely,



Gay A. Rye
Executive Officer

**WESTERN STATES
INSURANCE**

AGENCY
255 Bridge Street • P.O. Box 160
Bigfork, Montana 59911
406/837-5281
Fax 406/837-3540

SENATE L. 1000 9 1000

EXHIBIT NO. 21DATE Feb 18, 1995BILL NO. SB 354

FEBRUARY 16, 1995

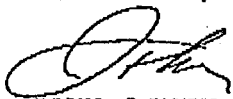
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA SENATE
HELENA, MONTANA

RE: SB354

DEAR SENATORS:

IT HAS COME TO MY ATTENTION THAT CONSIDERABLE ADDITIONAL WORK AND DISCUSSION IS NECESSARY BEFORE A LICENSING ACT SUCH AS THE ONE BEFORE YOU BECOMES LAW. PLEASE TABLE THIS MATTER OR UNTIL SUCH TIME THAT ALL INTERESTED PARTIES MAY HAVE AN OPPORTUNITY TO PROVIDE THEIR INPUT AND EXPERTISE. THANK YOU FOR YOUR CONTINUING WORK.

SINCERELY,


JOHN AGNEW

Tips to Hiring a Contractor

Questions to Ask!

- ⇒ Are they a local company?
- ⇒ How long have they been in business?
- ⇒ What type of work do they do?
- ⇒ Do they belong to a local association?
- ⇒ Have they done similar jobs?
- ⇒ Have they done work requiring permits?
- ⇒ Do they have local work references to check? Supplier references?
- ⇒ Can they provide a copy of their liability and work comp insurance certificate?

Get three different bids!

- ⇒ Bids that are noticeably lower than all the others, should be questioned. The difference may be in the quality of material(s) to be used, experience of the crew doing the actual work, something missed on the bid requirements, or it can be an indication that the contractor is not covering all the legitimate business costs, costs that may come back on you!

Don't be afraid to ask other questions!

- ⇒ Good communication with your contractor is vital to a successful project. It helps clarify exactly what you want done.

Permits are for your protection!

- ⇒ Make sure all permits are in place and

inspections are made as the work progresses. Make sure the name of your contractor appears on the permit.

Do your homework!

- ⇒ Check the references thoroughly. Go see past work and talk with the homeowners.

What should be in a Contract

- 1 Agreed price, including permit fees, if applicable.
- 2 Specify exactly what work is to be performed and the materials to be used.
- 3 Start and completion dates.
- 4 Put everything in writing.
- 5 Discuss the possible problems and inconveniences, such as who is responsible for cost overruns, agreement for obtaining draws as work progresses, and whose responsibility is it to clean up work area each day.
- 6 Put all decision(s) in writing.
- 7 Be cautious about paying in advance.
- 8 Avoid making final payment before completion, or until you are satisfied and have received a lien release.

As Work Progresses

- ♦ Make sure all permits are in place and inspections are in order.
- ♦ Ask questions. If you do not like or understand an answer, STOP the work until you do.
- ♦ Do not make final payment until you are satisfied.

Lien Law Information

- 1 Disclosure statement of registration, expiration date, and amount of bond should be given to you at the time the contract is signed (if the cost is over \$1,000).
- 2 You should receive construction lien information, so you can take steps to protect yourself. (Contact your lender, or attorney for further information.)
- 3 Montana law says you have final responsibility to see that all bills are paid in full.
- 4 Make final payment contingent upon receiving a lien release for labor and materials used on your project.

Be Smart.
It is up to you to protect yourself and your home.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1492
DATE Feb 16, 1995
BILL NO.

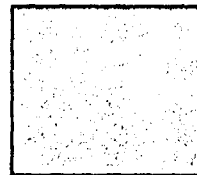
Risks & Liabilities

When hiring a contractor or acting as your own general contractor:

- You are responsible for the medical and time loss costs of employees injured while working on your home/project.
- You may be held liable for all unpaid taxes owed to the State.
- Your homeowner's insurance may not cover work done by an uninsured contractor.
- The law requires complete disclosure of all work that has been done on your home, if you resell. You may be required to re-do work done without permits, or inspections. Non-disclosure can lead to civil action being taken against you.
- You may be placing yourself and your family in a life threatening situation, especially when hiring unlicensed people to install: plumbing, electrical wiring, heating systems, or security systems.
- Suppliers can lien your home for non-payment of materials by your contractor.
- Unpaid workers can lien your property. When problems arise, your only recourse is a lengthy and costly civil action - if there are any assets of value to attach, and you can find the contractor.

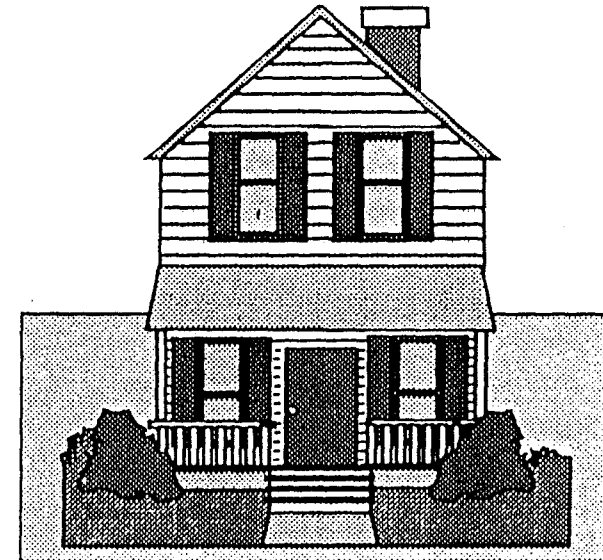
SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 22 2 of 2
DATE Feb-16-1993
BILL NO.

Recipient Name
Address Line 1
Address Line 2
Address Line 3



STOP!

Protect Yourself and Your Home Before You Hire A Contractor



sponsored by
Montana Building Industry Association
Suite 4D, Power Block Building
Helena, Montana 59601
406-442-4479

Amendments to Senate Bill No. 354
First Reading Copy

Requested by Senator Forrester
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 18, 1995

1. Page 3, line 9.

Following: "proof of"

Insert: "compliance with"

Following: "compensation"

Strike: "coverage"

Insert: "laws"

2. Page 3, line 10.

Following: "proof of"

Insert: "compliance with"

Following: "insurance"

Insert: "laws"

3. Page 3, line 16.

Strike: "or"

4. Page 3, line 17.

Strike: "statutory"

Insert: "registered"

Following: "agent"

Strike: ", if any,"

Following: "corporation"

Insert: "; or

(iv) the managers of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company"

5. Page 4, line 12.

Following: "expires"

Insert: "or any applicable exemption terminates"

DATE February 18, 1995

SENATE COMMITTEE ON

John & Employment Relations

BILLS BEING HEARD TODAY:

SB 348
SB 354
SB 384

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
JEFF ENGEL	HBA BILLINGS; MBIA	354		✓
Tim DEAN	TIM DEAN CONST. - BOZEMAN	354		✓
Charles R. Brooks	MT Food Dist. Assoc	354	✓	
Jaqueline Denmark	Am. Ins. Ass'n	348		✓
Jaqueline Denmark	AIA	354	✓	
Jaqueline Denmark	AIA	384	✓	
Frank Cote / jntel	Ins. Comm'r	384	✓	
Sta Kellogg	NCCI	384	✓	
Dave Cogley	Wilburd Hornes / H.B.I.A.	354		✓
George Wood	MT Self Insurers Assoc	348		✓
" "	" " " "	354	✓	
Pat Ford	Hamlin Const / Helena H.B.I.A.	354		✓
Michael Cecdy	MSF	348	X	
Bob Northington	MT MIA	348		—

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 18, 1995

SENATE COMMITTEE ON Labor & Emp. Relations

BILLS BEING HEARD TODAY: SB 354

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
David Dwyer	MT Chamber	SB 354	X	
Vernon R. Zukerose	BGS SELF	SB 354	X	
Jerry Driscoll	State Building Trades	SB 354	X	
MYLES M. EGAN	Dep. ASSOC. OF REALTORS	SB 354		X
Fred Stevenson	Prestige Homes	SB 354	X	
Nancy Butler	State Fund	SB 348 SB 354	withd. X	X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 18, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 348
SB 354
SB 384

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
ROBERT DURAND	Montana Building Industry MBIA Assn.	354		✓
Bob Ross Kalispell	MBIA ROSS const	354		✓
Chris Percot	Montana Building Industry	354		✓
GAY A. RYE	Home Builders Association of Billings	354		✓
ANDY SKINNER	SKINNER ENTERPRISES	354		✓
STAN HELGESON	MBIA - BILLINGS S.D. HELGESON Homes	354		✓
HARDY EDMONSON ^{BOZEMAN}	MBIA	354		✓
Debra Fulton	MSBA	348	✓	
Howard Bailey	MSBF	348	✓	
Ray Brannick	Montana Association of Counties	348		
Bill Pierce	MBIA Helena Pierce & Assoc. - Billings	354		✓
RICHARD HELGESON	HBA BILLINGS	354		✓
DARWIN NISSEN	MBIA	354		✓
W. James Kembel	City of Billings	354	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on March 15, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 307, SB 354, SB 408
Executive Action: SB 307, SB 408, SB 350, SB 187

HEARING ON SB 307

Opening Statement by Sponsor:

SEN. ETHEL M. HARDING, SD 37, Lake County, said this bill is an act clarifying the definition of acupuncture and prohibiting unlicensed persons from purporting to practice acupuncture.

REP. ROD MARSHALL, HB 28, Gallatin County, said he supports this bill.

Rorie Hanrahan said she had been a patient of an acupuncturist for a number of years and has found it to be very helpful and cost effective.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. DAVID EWER questioned the use of oriental herbs and foods and questioned if this was regulated by the Board of Medical Examiners. Mr. Yeakel said those specific items are not regulated by the Board. With the amendment they would then fall under the Board. REP. EWER questioned the use of the word "remains." He also asked if acupuncturists would be allowed to sell food or herbs. Ms. Marie said yes.

REP. EWER asked what the Board would do if oriental herbs and food were prescribed. Pat England, Executive Secretary/Counsel, Board of Medical Examiners, said there are not any governmental institutions which establish the purity or advocacy of any of these materials. They are classified as foods as opposed to drugs. The quality control over those remedies are ordinarily under the Food and Drug Administration. They are not regulated at this time.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 354

Opening Statement by Sponsor:

SEN. GARY FORRESTER, SD 8, Yellowstone County, said this bill is an act providing for contractor registration; providing for fees to fund the administration and enforcement of the registration; setting requirements for registration; requiring surety bonds; providing exemptions; providing restrictions on advertising; providing for administrative hearings; providing for volitions and penalties; granting rulemaking authority to the department of labor and industry and requiring independent contractors to obtain an exemption.

Proponents' Testimony:

Mark Lindsay, Montana Building Industry Association, said they had internally decided to table the issue of independent contractors and contractor licensing for this session and

establish a committee to work on this complex issue for two years and possibly come back to the legislature with some proposed legislation at that time. With the amendments to this bill they have now requested to be on record as supporting this bill. This bill is not going to solve all of the problems with contractors and independent contractors, but it is a good first step toward resolving some of those issues. This issue has been argued for years and has never been solved. They are committed to working with the Department of Labor and Industry in the formation of the administrative rules to help ensure that this legislation will work in the real world. The industry is also committed to studying this issue in the interim and to being prepared to make changes or even possibly consider full blown licensing which would be much more comprehensive than the registration bill which is before the committee. **EXHIBIT 3**

Harlee Thompson, Manager, Intermountain Truss, supplied written testimony. **EXHIBIT 4**

Jim Kembel, City of Billings, said they receive numbers of inquiries about poor workmanship and unsatisfactory performance on the part of contractors. Those complaints become much more prevalent during hailstorms. In some instances owners have had major costs because of faulty workmanship. Although this is not the total solution to the problem, it is a good beginning. In the future, some source of licensing board is needed to ensure the performance of these individuals.

Bob Ross, a builder from Kalispell, said the single largest part of time spent in government work is dealing with Workers' Compensation and independent contractor issues.

Dave Cogley said he is an independent contractor who has gone through a very contentious process. This bill does nothing to protect consumers, suppliers, material men or the people dealing with the contractors. He also suggested resisting amendments.

Chris Racicot, Executive Director, Montana Building Industry Association, said this bill would go a long way to ensure that the public, the construction industry and the state are properly protected from unscrupulous business practices in Workers' Compensation coverage obligations and employee wage obligations. **EXHIBIT 5**

David Owen, Montana Chamber of Commerce, said this kind of a bill is precisely why the Chamber is careful not to get caught up in these situations.

REP. VICKI COCCHIARELLA, HB 64, Missoula County, stated her support of this bill.

TAPE 1, SIDE B

Carl Schwietzer, Montana Contractors Association, said many of the provisions in this bill are supported by their association.

Chuck Hunter, Department of Labor and Industry, stated they support the bill with the amendments.

Charles Brooks, Billings Area Chamber of Commerce, said they support this bill.

Doug Abelin said he originally came to the legislature to oppose the bill but now supports it.

Janqueline Lenmark, American Insurance Association, said every session they have struggled and worked with this problem. This bill is a giant step forward in addressing what has been a serious problem for Montana.

Lawrence Hubbard, State Compensation Insurance Fund, said they support this bill.

Opponents' Testimony:

Jim Branning said he opposes this bill because it would put many contractors out of business.

Questions From Committee Members and Responses:

REP. LARSON asked the price of a bond. SEN. FORRESTER said if a person had a shaky credit record it would probably be \$50 per \$1000. If a specialty contractor is required, a \$200-per-year outlay is required. If a good credit rating is received, the bond charges would probably be \$25 per \$1000.

REP. EWER questioned assurity. Mr. Hunter said the Wage Payment Act have the remedies available.

Closing by Sponsor:

The sponsor closed.

TAPE 2, SIDE A

HEARING ON SB 408

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD 6, Yellowstone County, said this bill is an act providing that the State Lottery Director may enter into contracts for materials, equipment, supplies, and services; exempting the State Lottery from certain laws regulating contracts without he state.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-15-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	✓		
Rep. Rose Forbes	X		
Rep. Jack Herron	✓		
Rep. Bob Keenan	✓		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss			

DATE 3-15-95
HB SB354

Testimony
Senate Bill No. 354
March 15, 1995

Mr. Chairman, Members of the Committee,

I am Mark Lindsay, and I am here representing the Montana Building Industry Association. I am also a general contractor here in Helena specializing in custom homes and light commercial projects.

As some of you probably know the Montana Building Industry Association came out in opposition to this bill when it was introduced in the Senate. This opposition, however, was certainly not based on the content or the intent of the bill.

The Montana Building Industry Association had internally decided to table the issue of independent contractors and contractor licensing for this session and establish a committee to work on this complex issue for two years and possibly come back to the legislature with some proposed legislation at that time.

This bill caught us by surprise and we weren't prepared to deal with it when it was introduced in the Senate. With the amendments to this bill that you now have before you the Montana Building Industry Association is now going on record as supporting this legislation. I want to personally thank Senator Forrester for his willingness to let us amend his bill.

Going back to the '93 session we have had some fairly heated debates with the Senator concerning independent contractors and I think this bill is a compromise on both sides that we are willing to accept.

This bill is not going to solve all of the problems with contractors and independent contractors but it is a good first step toward resolving some of those issues. We have been arguing this issue for years and have never been able to put forth a solution.

The Building Industry is committed to working with the Department of Labor and Industry in the formation of the administrative rules to help ensure that this legislation will work in the real world. The industry is also committed to studying this issue in the interim and to be prepared to make changes or, even possibly consider full blown licensing which would be much more comprehensive than the registration bill you have before you.

Once again I would like to thank Senator Forrester for his work on this issue and I would strongly ask that you vote for Senate Bill No. 354



EXHIBIT 4
DATE 3-15-95
SB 354

Truss Division
406/449-5553

SB 354
REGISTRATION OF CONSTRUCTION CONTRACTORS BY
THE DEPARTMENT OF LABOR
Recommend
Do Pass

Mr. Chairman members of the committee:

I am Harlee Thompson manager of Intermountain Truss located here in Helena. I serve on the State and local board of directors for the Montana Building Industry Association (MBIA). I am also Treasurer of the Coalition for Work Comp System Improvement (CWCSI).

I have appeared in two previous Legislative sessions supporting legislation to eliminate the independent contractor (IC) exemption currently allowed by law. During the last session the bill designed to accomplish this passed the house by a vote of 99 to 1. This same bill died on the Senate floor due to the efforts of Senator Forrester. Since that time several groups affected have been working with the Senator to find some sort of compromise to this issue. SB bill 354 is a result of this effort.

The problem with the independent contractor exemption is lack of clarity as to who is an IC or is actually an employee. Under the current system there are contractors out there that even require IC status as a condition of employment. This practice is illegal under current law but is very hard if not impossible to enforce. We also have the problem of the IC getting injured then claiming to be an employee.

SB 354 will require every contractor in the construction industry to register. At the time of registration they will be required to declare if they have employees or if they work alone. Whether they have employees or not they will be required to provide proof of compliance to work comp law. SB 354 will tighten up the requirements to obtain IC status. SB 354 also includes a definition of an IC. If the IC is not registered he IS your employee. Very simple. If the IC is registered and the contractor has confirmed this with the Department of Labor the contractor is not liable as an employer.

There are a few pages of amendments that are required to make this bill do what all of the interested parties required. These amendments are the result of working jointly with the major parties that will be effected by this legislation. This bill is the result of a lot of compromises within the building industry and with Senator Forrester. This bill is not a cure all but goes a long way to close gaps and address an area of serious abuse in the current system. This is a bill that we can all live with and will make our responsibilities in this very gray area much clearer.

I cannot stress enough the efforts that have gone into SB 354 to insure that it is a good piece of legislation.

The MBIA and the CWCSI and I encourage you to pass SB 354 as amended. I will be available for questions if required.

Thank You.

Amendments to Senate Bill No. 354
Third Reading Copy

Requested by Senator Gary Forrester
For the Committee on Business and Labor

Prepared by Susan B. Fox
March 14, 1995

1. Title, line 5.

Following: "REGISTRATION;"

Insert: "PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN
EDUCATION PROGRAM;"

2. Title, line 10.

Following: "39-3-705,"

Insert: "39-3-706,"

3. Page 5, line 3.

Following: "Fees"

Insert: "-- education program"

4. Page 5, line 9.

Strike: "\$70"

Insert: "\$80"

5. Page 5, line 12.

Insert: "(5) The department shall establish, cooperatively with
representatives of the building industry, an industry and
consumer information program, funded with 15% of the fees,
to educate the building industry about the registration
program and to educate the public regarding the hiring of
building contractors.

(6) The fee for a joint application for a certificate of
registration and an independent contractor exemption may not
exceed the fee charged for a certificate of registration."

6. Page 5, lines 19 and 23.

Strike: "substantial"

7. Page 5, line 28.

Strike: "PERSON"

Insert: "contractor"

Following: "OF"

Strike: "A"

Insert: "another"

8. Page 5, line 29.

Following: "COVERAGE"

Insert: "for the other contractor or for any employee of the
other contractor"

Strike: "PERSON"

Insert: "contractor"

9. Page 5, line 30.

Following: "THAT THE"

Insert: "other"

Strike: "PERSON"

Insert: "contractor"

10. Page 7, line 12.

Following: "(15)"

Insert: "to a contract security company, licensed under Title 37,
chapter 60, operating within the scope of the license; or
(16)"

11. Page 10, line 5.

Strike: "and whether a contractor is bonded"

12. Page 11, lines 1 and 2.

Following: "investigations --" on line 1

Strike: the remainder of line 1 through "injunctions" on line 2

Insert: "citations"

13. Page 12, lines 4 and 5.

Following: "shall" on line 4

Strike: the remainder of line 4 through "to" on line 5

14. Page 13, line 9.

Strike: "-- appeal"

Following: "determination --"

Strike: "failure"

Insert: "appeal -- duty"

15. Page 16, line 24.

Strike: "another"

Insert: "any person or entity"

16. Page 16, line 25.

Strike: "other"

Insert: "person or entity"

17. Page 16, line 26.

Strike: "to the other"

18. Page 17, lines 1 through 5.

Strike: lines 1 through 5 in their entirety

Insert: "(i) of \$6,000 for a general contractor or \$4,000 for a
specialty contractor if the contractor is a sole proprietor,
an independent contractor, or a corporate officer working as
an individual without employees; or

(ii) equal to a contractor's average monthly employee
payroll, based on 12 consecutive months' payroll, as estimated by
the commissioner. However, the amount may not be less than
\$6,000 for a general contractor or \$4,000 for a specialty
contractor and may not exceed \$25,000 for any contractor."

19. Page 17, line 7.

Strike: "insuring"

Insert: "guaranteeing"

20.- Page 17, lines 11 and 12.

Following: "labor" on line 11

Strike: the remainder of line 11 through "contractor" on line 12

21. Page 18, line 5.

Following: "due,"

Strike: "the" through "furnished,"

22. Page 18, line 13.

Strike: "transmit"

Insert: "mail"

23. Page 18, line 14.

Following: "registrant"

Insert: "at the address"

Following: "the"

Insert: "registrant's"

24. Page 18, line 25.

Strike: line 25 in its entirety

Renumber: subsequent subsections

25. Page 19, line 11.

Insert: "

Section 29. Section 39-3-706, MCA, is amended to read:

"39-3-706. Liability of person contractor contracting with another contractor ~~for failure to require bond~~. Any person A contractor contracting with a another contractor who fails to require the other contractor to ~~acquire the surety bond provided for in 39-3-703(1)~~ be registered pursuant to [sections 1 through 25] is liable to the employees of ~~that~~ the other contractor for their wages and fringe benefits on that particular job.""

Renumber: subsequent sections



Montana
Building
Industry
Association

Christopher J. Racicot
Executive Director
Suite 4D, Power Block
Helena, Montana 59601
(406) 442-4479
(406) 442-4483 Fax

1994-1995 Officers
President
Stan Helgeson, Billings
First Vice President
Bob Ross, Jr., Kalispell
Second Vice President
Sam Gates, Missoula
Treasurer
Mark Meek, Helena
Past President
Eugene Graf, Bozeman
Builder Director
Mark Lindsay, Helena
National Representative
Tim Dean, Bozeman
Associate Director
Frank Armknecht, Bozeman
Build PAC Director
Jim Coras, Missoula

EXHIBIT 5
DATE 3-15-95
HB SB 354

March 15, 1995

House Business and Industry Committee
Montana State Legislature
Helena, Montana

Re: Senate Bill 354

Dear Representative Bruce Simon and Committee Members:

The Montana Building Industry Association is an organization comprising nearly 1,000 building trade businesses from the around the state of Montana. The MBIA is a industry leader in encouraging professional and responsible business and building principles.

It is for these reasons that the MBIA stands in support to SB 354 in its amended form. SB 354 will go a long way to ensure that all concerned:

- the public,
- the construction industry and
- the State of Montana

are properly protected from unscrupulous business practices in workers' compensation coverage obligations and employee wage obligations.

When SB 354 first surfaced a number of weeks ago, the MBIA stood in opposition to the bill. However, since then the MBIA, Senator Forrester, the Department of Labor and Industry, the Montana Contractors Association and the Legislative Council have thoroughly examined each and every aspect of the bill to ensure it is both firm in enforcement yet fair to all effected.

Please give your favorable consideration to Senate Bill 354 with the proposed amendments.

Sincerely,

Christopher J Racicot
Executive Director, MBIA

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business + Labor

DATE 7-15-95

BILL NO. SB 354

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mark Lindsay	MT Building Ind.	✓	
Charles R. Brooks	Billings Chamber	✓	
Bob Fox	MBIA - Ross Const	✓	
Bill Pierce	Pierce & Associates Builders - Helena		✓
HARLEE THOMPSON Helena	CWCSI + MBIA	✓	
Jaqueline Denmark	Am. Ins. Assoc.	✓	
Dave Logley	Wildwood Log Homes MBIA	✓	
W. James Kember	City of Billings	✓	
Don Allen	CWCSF	✓	
CHUCK HUNTER	D.O.L.I.	✓	
George Wood	Mountain Self Insurance Co	✓	
Jim Brayning	Self Employed		✓
Douglas George	Self Employed		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 3-15-95

BILL NO. SB 354 SPONSOR(S) SPR Forres Yper

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>Rep Northington</u> <u>Laurence Hubbard</u>	<u>NIA</u> <u>State Fund</u>	<u>—</u> <u>✓ as amended</u>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORM
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on March 21, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 602
Executive Action: HB 599, HB 526, HB 580, HB 581, SB 354,
SB 313, HB 602

EXECUTIVE ACTION ON HB 599

Motion: REP. BOB PAVLOVICH MOVED HB 599 DO PASS. REP. MILLS MOVED THE GOVERNOR'S AMENDMENTS.

EXECUTIVE ACTION ON SB 354

Motion: REP. PAVLOVICH MOVED SB 354 BE CONCURRED IN. REP. PAVLOVICH MOVED THE FORRESTER AMENDMENTS.

Vote: Motion carried to adopt the Forrester amendments 18-0.

Motion: REP. PAVLOVICH MOVED THE #2 FORRESTER AMENDMENTS.

Discussion:

CHAIRMAN SIMON explained the #2 Forrester amendment.

TAPE 1, SIDE B

Vote: Motion carried to adopt the #2 Forrester amendments 18-0.

Motion/Vote: REP. PAVLOVICH MOVED SB 354 BE CONCURRED IN AS AMENDED. Motion carried 16-2 with REPS. SLITER and KEENAN voting no.

EXECUTIVE ACTION ON SB 313

Motion: REP. ELLIS MOVED SB 313 BE CONCURRED IN.

Discussion:

REP. JACK HERRON said he favored the bill because it is a fairness issue. This legislation affects older people.

REP. BARNETT asked what happens once the playing field has been leveled. He asked why discounts should be offered or whether the price rise should for everyone with a resultant increase of cost.

CHAIRMAN SIMON said he wished to address this question because it affects why he opposes the bill. On page 3 it first speaks to civil damages. Civil penalties of not less than \$1000 and not more than \$5000 for each violation could potentially comprise thousands of transactions each which could be considered a separate violation. The person who commits the violation may not sell drugs in the state which means a manufacturer could be banned from doing business in the state as a result of this penalty. This bill does not say how long the penalty would be in force. These penalties are so severe, manufacturers will believe it is too risky to get involved. No discounts would be available to Montana and the medication goes to the top price. These penalties are horrendous and are the stiffest penalties of any violation. Consequently, everyone in Montana will be paying the top price and there will be no discounts available. This bill would also require the attorney general to investigate one of the companies which may be involved. If there is any recovery, half of the recovery goes to the county in which the action is brought.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-21-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Page 1 of 5

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 354 (third reading copy -- blue) be concurred in as amended.

Signed:


Bruce Simon, Chair

Carried by: Rep. Simon

And, that such amendments read:

1. Title, line 5.

Following: "REGISTRATION;"

Insert: "PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN
EDUCATION PROGRAM;"

2. Title, line 10.

Following: "39-3-705,"

Insert: "39-3-706,"

3. Page 5, line 3.

Following: "Fees"

Insert: "-- education program"

4. Page 5, line 9.

Strike: "\$70"

Insert: "\$80"

5. Page 5, line 12.

Insert: "(5) The department shall establish, cooperatively with
representatives of the building industry, an industry and
consumer information program, funded with 15% of the fees,

Committee Vote:

Yes 16, No 2

651553SC.Hbk

to educate the building industry about the registration program and to educate the public regarding the hiring of building contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration."

6. Page 5, lines 19 and 23.

Strike: "substantial"

7. Page 5, line 28.

Strike: "PERSON"

Insert: "contractor"

Following: "OF"

Strike: "A"

Insert: "another"

8. Page 5, line 29.

Following: "COVERAGE"

Insert: "for the other contractor or for any employee of the other contractor"

Strike: "PERSON"

Insert: "contractor"

9. Page 5, line 30.

Following: "THAT THE"

Insert: "other"

Strike: "PERSON"

Insert: "contractor"

10. Page 7, line 12.

Following: "(15)"

Insert: "to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; or (16)"

11. Page 7, line 19.

Strike: "All"

Insert: "Except for telephone books, all"

12. Page 7, lines 22 and 23.

Following: "section of" on line 22

Strike: remainder of line 22 through "other" on line 23

Following: "directories" on line 23

Insert: ", excluding telephone books,"

13. Page 10, line 5.

Strike: "and whether a contractor is bonded"

14. Page 11, lines 1 and 2.

Following: "investigations --" on line 1

Strike: the remainder of line 1 through "injunctions" on line 2

Insert: "citations"

15. Page 12, lines 4 and 5.

Following: "shall" on line 4

Strike: the remainder of line 4 through "to" on line 5

16. Page 13, line 9.

Strike: "-- appeal"

Following: "determination --"

Strike: "failure"

Insert: "appeal ,-- duty"

17. Page 16, line 24.

Strike: "another"

Insert: "any person or entity"

18. Page 16, line 25.

Strike: "other"

Insert: "person or entity"

19. Page 16, line 26.

Strike: "to the other"

20. Page 17, lines 1 through 5.

Strike: lines 1 through 5 in their entirety

Insert: "(i) of \$6,000 for a general contractor or \$4,000 for a specialty contractor if the contractor is a sole proprietor, an independent contractor, or a corporate officer working as

an individual without employees; or
(ii) equal to a contractor's average monthly employee payroll, based on 12 consecutive months' payroll, as estimated by the commissioner. However, the amount may not be less than \$6,000 for a general contractor or \$4,000 for a specialty contractor and may not exceed \$25,000 for any contractor."

21. Page 17, line 7.

Strike: "insuring"

Insert: "guaranteeing"

22. Page 17, lines 11 and 12.

Following: "labor" on line 11

Strike: the remainder of line 11 through "contractor" on line 12

23. Page 18, line 5.

Following: "due."

Strike: "the" through "furnished."

24. Page 18, line 13.

Strike: "transmit"

Insert: "mail"

25. Page 18, line 14.

Following: "registrant"

Insert: "at the address"

Following: "the"

Insert: "registrant's"

26. Page 18, line 25.

Strike: line 25 in its entirety

Renumber: subsequent subsections

27. Page 19, line 11.

Insert: "

Section 29. Section 39-3-706, MCA, is amended to read:

"39-3-706. Liability of ~~person~~ contractor contracting with another contractor ~~for failure to require bond~~. Any person A contractor contracting with a another contractor who fails to require the other contractor to ~~acquire the surety bond provided for in 39-3-703(1)~~ be registered pursuant to [sections 1 through

March 21, 1995

Page 5 of 5

251 is liable to the employees of: ~~that~~ the other contractor for their wages and fringe benefits on that particular job.""

Renumber: subsequent sections

-END-

SENATE BILL NO. 354

INTRODUCED BY FORRESTER, SIMON, HARP, QUILICI, GALVIN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN EDUCATION PROGRAM; SETTING REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS; PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; REQUIRING INDEPENDENT CONTRACTORS TO OBTAIN AN EXEMPTION; AMENDING SECTIONS 37-71-211, 39-3-703, ~~AND 39-3-705~~, 39-3-706, AND 39-71-120, MCA; AND REPEALING SECTION 39-3-704, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of labor and industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt rules to implement a self-funding registration program for contractors to ensure that:

(1) contractors are in compliance with the laws governing workers' compensation coverage, unemployment insurance coverage, and other state laws;

~~(2) the consumers of construction services are protected; and~~

~~(3)~~ (2) all persons in the construction business are operating on a "level playing field" with regard to compliance with state laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** It is the purpose of [sections 1 through ~~28~~ 25] to:

~~(1) afford protection to the public, including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor, from unreliable, fraudulent, financially irresponsible, or incompetent contractors; and~~

(2) ensure that all contractors are competing fairly and in compliance with state laws.

1 **NEW SECTION.** **Section 2. Definitions.** As used in [sections 1 through ~~28~~ 25], the following
2 definitions apply:

3 (1) "Contractor" means a person, firm, or corporation that:

4 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
5 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,
6 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to
7 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other
8 structures or works, or the installation or repair of roofing or siding; or

9 (b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property,
10 employs members of more than one trade on a single job or under a single building permit, except as
11 otherwise provided.

12 (2) "Department" means the department of labor and industry.

13 (3) ~~(a)~~ "General contractor" means a contractor whose business operations require the use of more
14 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole
15 or in part.

16 ~~(b) The term does not include an individual who performs all work personally, without employees~~
17 ~~or other specialty contractors, as defined in this section.~~

18 (4) "Specialty contractor" means a contractor whose operations do not fall within the definition
19 of general contractor.

20 (5) "Verification" means the receipt and duplication by a political subdivision of a contractor
21 registration card that is current on its face.

22
23 **NEW SECTION.** **Section 3. Registration required -- prohibited acts -- criminal penalty.** (1) On or
24 before July 1, 1996, each contractor shall register with the department.

25 (2) It is a misdemeanor for a contractor to:

26 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

27 (i) without being registered as required by [sections 1 through ~~28~~ 25]; or

28 (ii) when the contractor's registration is suspended;

29 (b) use a false or expired registration number in purchasing or offering to purchase an
30 advertisement for which a contractor registration number is required; or

(c) transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.

(3) A THE DEPARTMENT MAY CAUSE THE CRIMINAL PROCEEDINGS FOR A misdemeanor action under [sections 1 through 28 25] ~~must be prosecuted~~ TO BE INITIATED FOR PROSECUTION IN THE LOWEST COURT OF CONCURRENT JURISDICTION in the county where the infraction occurs.

NEW SECTION. Section 4. Application for registration -- grounds for denial. (1) An applicant for registration as a contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

- (a) the applicant's social security number;
- (b) proof of COMPLIANCE WITH workers' compensation ~~coverage~~ LAWS;
- (c) proof of COMPLIANCE WITH unemployment insurance LAWS;
- (d) the I.R.S. employer identification number, if any;
- (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of specialty; and
- (f) the name and address of:
 - (i) each partner if the applicant is a firm or partnership;
 - (ii) the owner if the applicant is an individual proprietorship; or
 - (iii) the corporate officers and ~~statutory~~ REGISTERED agent, ~~if any~~, if the applicant is a corporation;

OR

(IV) THE MANAGER OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY OR THE MEMBERS OF A MEMBER-MANAGED LIMITED LIABILITY COMPANY AND THE REGISTERED AGENT IF THE APPLICANT IS A LIMITED LIABILITY COMPANY.

(2) The information contained in the application is a matter of public record and is open to public inspection.

(3) The department may verify the workers' compensation coverage information provided by the applicant in subsection (1)(b), including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Montana.

(4) Registration must be denied if:

1 (a) the applicant has been previously registered as a sole proprietor, partnership, LIMITED LIABILITY
2 COMPANY, or corporation and was a principal or officer of the corporation; and

3 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part
4 7, that was incurred during a previous registration under [sections 1 through ~~28~~ 25].

5
6 **NEW SECTION. Section 5. Bond or other security required.** Each applicant shall, at the time of
7 registration or reregistration, file with the department a surety bond or other security as provided in Title
8 39, chapter 3, part 7.

9
10 **NEW SECTION. Section 6. Certificate of registration -- issuance -- duration -- renewal --**
11 **suspension.** (1) The department shall issue to the applicant a certificate of registration upon compliance
12 with the registration requirements of [sections 1 through ~~28~~ 25].

13 (2) If the department approves an application, it shall issue a certificate of registration to the
14 applicant. The department shall place the expiration date on the certificate. ~~The~~ EXCEPT AS PROVIDED
15 IN SUBSECTION (3), THE certificate is valid until the earliest date of:

16 (a) 1 year;

17 (b) the date the bond expires; or

18 (c) the date the WORKERS' COMPENSATION OR UNEMPLOYMENT insurance expires OR ANY
19 APPLICABLE EXEMPTION TERMINATES.

20 (3) THE CERTIFICATE ISSUED UNDER THIS SECTION TO AN INDEPENDENT CONTRACTOR IS
21 INVALID ON THE DATE THE CONTRACTOR HIRES EMPLOYEES UNLESS THE CONTRACTOR PROVIDES
22 PROOF TO THE DEPARTMENT OF WORKERS' COMPENSATION COVERAGE FOR THOSE EMPLOYEES.

23 ~~(3)(4)~~ A contractor may supply a short-term bond or insurance policy to bring its registration period
24 to the full 1 year.

25 ~~(4)(5)~~ If a contractor's surety bond or other security has an unsatisfied judgment against it or it
26 is canceled, the contractor's registration is automatically suspended on the effective date of the impairment
27 or cancellation. The department shall give notice of the suspension to the contractor.

28
29 **NEW SECTION. Section 7. When partnership or joint venture considered registered.** A partnership
30 or joint venture is considered registered under [sections 1 through ~~28~~ 25] if one of the general partners or

1 venturers whose name under which the partnership or venture does business is registered.

2
3 **NEW SECTION. Section 8. Fees -- EDUCATION PROGRAM.** (1) The department shall charge fees
4 for:

5 (a) issuance, renewal, and reinstatement of certificates of registration; and

6 (b) changes of name, address, or business structure.

7 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
8 issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through ~~28~~ 25].
9 The costs include reproduction, travel, per diem, and administrative and legal support costs.

10 (3) The fees charged in subsection (1)(a) may not exceed ~~\$50~~ ~~\$70~~ \$80.

11 (4) The fees collected under this section must be deposited in the state special revenue account
12 to the credit of the department for the administration and enforcement of [sections 1 through ~~28~~ 25].

13 **(5) THE DEPARTMENT SHALL ESTABLISH, COOPERATIVELY WITH REPRESENTATIVES OF THE**
14 **BUILDING INDUSTRY, AN INDUSTRY AND CONSUMER INFORMATION PROGRAM, FUNDED WITH 15%**
15 **OF THE FEES, TO EDUCATE THE BUILDING INDUSTRY ABOUT THE REGISTRATION PROGRAM AND TO**
16 **EDUCATE THE PUBLIC REGARDING THE HIRING OF BUILDING CONTRACTORS.**

17 **(6) THE FEE FOR A JOINT APPLICATION FOR A CERTIFICATE OF REGISTRATION AND AN**
18 **INDEPENDENT CONTRACTOR EXEMPTION MAY NOT EXCEED THE FEE CHARGED FOR A CERTIFICATE**
19 **OF REGISTRATION.**

20
21 **NEW SECTION. Section 9. Registration prerequisite to suit OR LIEN CLAIM -- LIMITING LIABILITY.**

22 (1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain
23 an action in any court of this state for the collection of compensation for the performance of any work or
24 for breach of contract for which registration is required under [sections 1 through ~~28~~ 25] without alleging
25 and proving that the contractor was a registered contractor and held a current and valid certificate of
26 registration at the time the contractor entered the contract for the performance of work.

27 (2) For the purposes of this section, the court may not find a contractor in ~~substantial~~ compliance
28 with the registration requirements of [sections 1 through ~~28~~ 25] unless:

29 (a) the department has on file the information required by [section 4]; and

30 (b) the contractor has a current bond or other security as required by [section 5].

1 (3) In determining whether a contractor is in ~~substantial~~ compliance with the registration
2 requirements of [sections 1 through ~~28~~ 25], the court shall consider the length of time during which the
3 contractor did not hold a valid certificate of registration.

4 (4) A CONTRACTOR MAY NOT BRING OR MAINTAIN A LIEN CLAIM UNDER TITLE 71, CHAPTER
5 3, PART 5, UNLESS THE CONTRACTOR IS REGISTERED AT THE TIME OF ENTERING INTO A CONTRACT.

6 (5) A ~~PERSON~~ CONTRACTOR ENGAGING THE SERVICES OF A ~~ANOTHER~~ CONTRACTOR IS NOT
7 LIABLE AS AN EMPLOYER FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE
8 COVERAGE FOR THE OTHER CONTRACTOR OR FOR ANY EMPLOYEE OF THE OTHER CONTRACTOR IF
9 THE ~~PERSON~~ CONTRACTOR VERIFIES WITH THE DEPARTMENT THAT THE OTHER CONTRACTOR WITH
10 WHOM THE ~~PERSON~~ CONTRACTOR IS CONTRACTING FOR SERVICES IS REGISTERED AS PROVIDED
11 UNDER [SECTIONS 1 THROUGH 25].

12
13 NEW SECTION. Section 10. Exemptions. [Sections 1 through ~~28~~ 25] do not apply:

14 (1) to an authorized representative of the United States government, the state of Montana, or any
15 incorporated municipality, county, alternative form of local government, irrigation district, reclamation
16 district, or other municipal or political corporation or subdivision of this state;

17 (2) to an officer of a court acting within the scope of office;

18 (3) to a public utility operating under the regulations of the public service commission in
19 construction, maintenance, or development work incidental to its own business;

20 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to
21 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine
22 or mineral deposit when performed by an owner or lessee;

23 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not
24 actually fabricated into and do not become a permanent fixed part of a structure;

25 (6) to the construction, alteration, improvement, or repair carried on within the limits and
26 boundaries of a site or reservation under the legal jurisdiction of the federal government;

27 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into
28 or consuming them in the performance of the work of the contractor;

29 (8) to work or operation on one undertaking or project considered of a casual, minor, or
30 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and

materials and all other items, is less than \$500. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or different contractor, or in which a division of the operation is made into contracts of amounts of less than \$500 for the purpose of evasion of [sections 1 through ~~28~~ 25] or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.

(9) except when work is performed by a registered contractor, to a construction or operation incidental to the construction or repair:

(a) of irrigation and drainage ditches of an irrigation district or reclamation district;

(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

(c) related to clearing or other work upon land in rural districts for fire prevention purposes;

(10) to an owner who contracts for a project with a registered contractor;

(11) to a person working on the person's property, whether occupied by the person or not, and a person working on the person's residence, whether owned by the person or not, but this exemption does not apply to a person otherwise covered by [sections 1 through ~~28~~ 25] who constructs an improvement on the person's property with the intention and for the purpose of selling the improved property;

(12) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

(14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

(15) TO A CONTRACT SECURITY COMPANY, LICENSED UNDER TITLE 37, CHAPTER 60, OPERATING WITHIN THE SCOPE OF THE LICENSE; OR

(16) to a person who engages in the activities regulated as an employee of a registered contractor with wages as the sole compensation or as an employee with wages as the sole compensation.

NEW SECTION. **Section 11. Business practices -- advertising -- penalty.** (1) Except as provided in [section 7], a person who has registered under one name as provided in [sections 1 through ~~28~~ 25] may not engage in the business or act in the capacity of a contractor under any other name unless that name also is registered under [sections 1 through ~~28~~ 25].

1 (2) ~~ALL~~ EXCEPT FOR TELEPHONE BOOKS, ALL advertising, contracts, correspondence, cards, signs,
2 posters, papers, and documents that show a contractor's name or address must show the contractor's
3 name and address as registered under [sections 1 through ~~28~~ 25].

4 (3) (a) The alphabetized listing of contractors appearing in the advertising section of ~~telephone~~
5 ~~books or other directories,~~ EXCLUDING TELEPHONE BOOKS, and all advertising must show the contractor's
6 current registration number. However, signs on motor vehicles and on-premises signs do not constitute
7 advertising under this section.

8 (b) All materials used to directly solicit business from retail customers who are not businesses must
9 show a contractor's current registration number. A contractor may not use a false or expired registration
10 number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not
11 subject to this subsection.

12 (4) A contractor may not advertise that the contractor is bonded because of the bond required to
13 be filed provided in [section 5].

14 (5) A contractor may not falsify a registration number and use it in connection with a solicitation
15 or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor,
16 officer, or employee of a contractor shall use a true name and address at all times while engaged in the
17 business or capacity of a contractor or in activities related to a contractor.

18 (6) (a) The finding of a violation of this section by the department at a hearing held in accordance
19 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty
20 of not more than \$5,000, as determined by the department. THE REQUIRED HEARING MAY BE HELD BY
21 TELEPHONE OR BY VIDEOCONFERENCE. A penalty collected under this section must be deposited in the
22 ~~general fund~~ STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR
23 ADMINISTRATION AND ENFORCEMENT OF [SECTIONS 1 THROUGH 25].

24 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent
25 error.

26
27 NEW SECTION. Section 12. Unlawful advertising -- liability -- citations. (1) When determining
28 a violation under [section 11], the person who purchased or offered to purchase the advertising must be
29 held responsible.

30 (2) If the department, upon investigation, has probable cause to believe that a person holding a

1 registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor
2 who is not otherwise exempted from [sections 1 through ~~28 25~~] has violated [section 11] by unlawfully
3 advertising for work covered by [sections 1 through ~~28 25~~] in an alphabetical or classified directory, the
4 department may issue a citation containing an order of correction. The order must require the violator to
5 cease the unlawful advertising.

6 (3) If the person to whom a citation is issued under subsection (2) notifies the department in
7 writing that the person contests the citation, the department shall offer an opportunity for an adjudicative
8 proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.
9

10 ~~NEW SECTION. Section 13. Disclosure statement required — prerequisite to lien claim. (1) A~~
11 ~~contractor who agrees to perform a contracting project for the repair, alteration, or construction of four or~~
12 ~~fewer residential units or accessory structures on residential property in which the bid or contract price~~
13 ~~totals \$1,000 or more or of a commercial building in which the contract price totals \$1,000 or more but~~
14 ~~less than \$60,000 shall provide the customer with the following disclosure statement prior to starting work~~
15 ~~on the project:~~

16 "NOTICE TO CUSTOMER

17 This contractor is registered with the state of Montana, registration number _____, as a general or specialty
18 contractor and has posted with the state a bond or cash deposit of \$6,000 or \$4,000 pursuant to ~~39-3-703~~
19 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of
20 contract in the conduct of the contractor's business. The expiration date of this contractor's registration
21 is _____. This bond or cash deposit may not be sufficient to cover a claim that might arise from the
22 work done under your contract. If a supplier of materials used in your construction project or an employee
23 of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property
24 may be subject to a lien to force payment. If you wish additional protection, you may request the
25 contractor to provide you with original "lien release" documents from each supplier or subcontractor on
26 your project. The contractor is required to provide you with further information about lien release
27 documents if you request it. General information is also available from the department of labor and
28 industry."

29 (2) ~~A contractor subject to this section shall notify a consumer to whom notice is given under~~
30 ~~subsection (1) if the contractor's registration has expired or is revoked or suspended by the department~~

1 ~~prior to completion or other termination of the contract with the consumer.~~

2 ~~(3) A contractor subject to this section may not bring or maintain a lien claim under Title 71,~~
3 ~~chapter 3, part 5, based on a contract to which this section applies without alleging and proving that the~~
4 ~~contractor has provided the customer with a copy of the disclosure statement required in subsection (1).~~

5 ~~(4) This section does not apply to contracts authorized under Title 18, chapter 2, or to contractors~~
6 ~~contracting with other contractors.~~

7 ~~(5) Failure to comply with this section constitutes an infraction under the provisions of [sections~~
8 ~~1 through 28].~~

9 ~~(6) The department shall produce model disclosure statements and public service announcements~~
10 ~~detailing the information needed to assist contractors and contractors' customers to comply with this~~
11 ~~section. The department shall periodically update the materials as needed.~~

12
13 **NEW SECTION. Section 13. Department to compile and update list of registered contractors --**
14 **availability -- fee.** (1) The department shall compile a list of all contractors registered under [sections 1
15 through ~~28~~ 25] and update the list at least bimonthly. The list is public information and must be available
16 to the public upon request for a reasonable fee.

17 (2) The department shall inform a person, firm, or corporation whether a contractor is registered
18 ~~and whether a contractor is bonded.~~ The department shall provide the information without charge, except
19 for a reasonable fee for any copies made.

20
21 **NEW SECTION. Section 14. Provisions exclusive -- certain local authority not limited or abridged.**
22 The provisions of [sections 1 through ~~28~~ 25] relating to the registration or licensing of a person, firm, or
23 corporation, including the requirement of a bond with the state of Montana named as obligee and the
24 collection of a fee, are exclusive. A political subdivision of the state may not require or issue any
25 registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or
26 abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee
27 levied upon all businesses. This section does not limit the authority of a local government with respect to
28 contractors not required to be registered under [sections 1 through ~~28~~ 25].

29
30 **NEW SECTION. Section 15. Violation -- infraction.** (1) It is a violation of [sections 1 through 28

1 25] and an infraction for any contractor to:

2 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being
3 registered as required by [sections 1 through ~~28~~ 25];

4 (b) advertise, offer to perform work, submit a bid, or perform work as a contractor when the
5 contractor's registration is suspended; or

6 (c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor
7 to work under a registration issued to another contractor.

8 (2) Each day that a contractor works without being registered as required by [sections 1 through
9 ~~28~~ 25], works while the contractor's registration is suspended, or works under a registration issued to
10 another contractor is a separate infraction. Each worksite at which a contractor works without being
11 registered as required by [sections 1 through ~~28~~ 25], works while the contractor's registration is
12 suspended, or works under a registration issued to another contractor is a separate infraction.

13

14 **NEW SECTION.** **Section 16. Violations -- investigations -- ~~evidence~~ ~~restraining orders~~**

15 ~~injunctions~~ **CITATIONS.** (1) The department shall appoint compliance inspectors to investigate alleged or
16 apparent violations of [sections 1 through ~~28~~ 25]. An authorized compliance inspector, upon presentation
17 of appropriate credentials, may inspect and investigate worksites at which a contractor had bid or is
18 presently working to determine whether the contractor is registered in accordance with [sections 1 through
19 ~~28~~ 25] or rules adopted under [section ~~28~~ 25] or whether there is a violation of [section ~~46~~ 15]. Upon
20 request of the compliance inspector, a contractor or an employee of the contractor shall provide information
21 identifying the contractor.

22 (2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee
23 is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice
24 to the contractor that the contractor is in violation of [sections 1 through ~~28~~ 25]. An employee who is
25 cited by a compliance inspector is not liable for any of the alleged violations contained in the citation unless
26 the employee is also the contractor.

27

28 **NEW SECTION.** **Section 17. Failure to provide information to identifying contractor --**
29 **misdemeanor.** Willful refusal to provide information identifying a contractor as required by [section ~~47~~ 16]
30 is a misdemeanor.

1 **NEW SECTION.** **Section 18. Restraining orders -- injunctions.** (1) If the authorized compliance
2 inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in
3 accordance with [sections 1 through ~~28~~ 25] or the rules adopted under [section ~~28~~ 25], the department
4 ~~shall~~ MAY issue an order immediately restraining further construction work at the worksite by the
5 contractor. The order shall describe the specific violation that necessitated the issuance of the restraining
6 order. The contractor or representative to whom the restraining order is directed may request a hearing
7 to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not
8 stay the effect of the restraining order.

9 (2) In addition to and after having invoked the powers of restraint vested in the department as
10 provided in subsection (1), the department, through the attorney general, may petition the district court to
11 enjoin any activity in violation of [sections 1 through ~~28~~ 25]. A prima facie case for issuance of an
12 injunction must be established by affidavits and supporting documentation that a restraining order was
13 served upon the contractor and that the contractor continued to work after service of the order. Upon the
14 filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending
15 the outcome of enforcement proceedings under [sections 1 through ~~28~~ 25], or to enforce restraining orders
16 issued by the department. If the contractor fails to comply with a court order, the department shall request
17 ~~the attorney general to~~ petition the district court for an order holding the contractor in contempt of court
18 and for any other appropriate relief.

19
20 **NEW SECTION.** **Section 19. Notice of infraction -- service.** The department may issue a notice
21 of infraction if the department reasonably believes that the contractor required to be registered by [sections
22 1 through ~~28~~ 25] has failed to do so or has otherwise committed a violation under [section ~~46~~ 15]. A
23 notice of infraction issued under this section may be personally served on the contractor named in the
24 notice by the department's compliance inspectors or service may be made by certified mail directed to the
25 contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm
26 or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice
27 of infraction is personally served upon an employee of a firm or corporation, the department shall send a
28 copy of the notice by certified mail within 4 days of service to the contractor if the department is able to
29 obtain the contractor's address.

1 **NEW SECTION. Section 20. Notice of infraction -- form.** The form of the notice of the infraction
2 issued under [sections 1 through ~~28~~ 25] must include a statement:

3 (1) that the notice represents a determination that the infraction has been committed by the
4 contractor named in the notice and that the determination is final unless contested as provided in [sections
5 1 through ~~28~~ 25];

6 (2) that the infraction is a civil offense;

7 (3) of the specific violation that necessitated the issuance of the notice of infraction;

8 (4) of penalty involved if the infraction is established;

9 (5) of the options provided in [sections 1 through ~~28~~ 25] for responding to the notice and the
10 procedures necessary to exercise these options;

11 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a
12 preponderance of the evidence, that the infraction was committed and that the contractor may subpoena
13 witnesses, including the compliance inspector who issued and served the notice of infraction;

14 (7) signed by the person who has been served with the notice of infraction that the contractor
15 promises to respond to the notice of infraction in one of the ways provided in [sections 1 through ~~28~~ 25];

16 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and
17 may be punished by a fine, imprisonment in jail, or both; and

18 (9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor
19 and may be punished by a fine, imprisonment in jail, or both.
20

21 **NEW SECTION. Section 21. Notice of infraction —appeal -- determination -- failure APPEAL --**
22 **DUTY to respond.** ~~(1) A violation designated as an infraction under [sections 1 through 28] must be heard~~
23 ~~and determined in an administrative hearing. If a party desires to contest the notice of infraction, the party~~
24 ~~shall file a notice of appeal with the department within 20 days of the issuance of the notice of infraction.~~
25 ~~The department shall conduct the hearing in the county where the infraction occurred.~~

26 ~~(2)(1)~~ Unless contested, the notice of infraction represents a determination that the contractor to
27 whom the notice was issued committed the infraction.

28 **(2) IF A PARTY DESIRES TO CONTEST THE DETERMINATION, THE PARTY SHALL FILE A NOTICE**
29 **OF APPEAL WITH THE DEPARTMENT WITHIN 20 DAYS OF THE ISSUANCE OF THE NOTICE OF**
30 **INFRACTION. THE DEPARTMENT SHALL CONDUCT A HEARING IN ACCORDANCE WITH THE MONTANA**

1 ADMINISTRATIVE PROCEDURE ACT. THE DEPARTMENT MAY CONDUCT THE HEARING BY TELEPHONE
2 OR BY VIDEOCONFERENCE.

3 (3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of
4 issuance of the notice of infraction.

5 (4) If a contractor named in the notice does not elect to contest the notice of infraction, the
6 contractor shall pay to the department the amount of the penalty prescribed for the infraction. When
7 payment of the appropriate penalty is received by the department, the department shall make the
8 appropriate entry in its records.

9 (5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall
10 respond by filing an answer of protest with the department, specifying the grounds of protest.

11
12 NEW SECTION. Section 22. Notice of infraction -- failure to respond -- refusal to sign -- penalty.

13 (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the
14 contractor is guilty of a misdemeanor and ~~must be prosecuted~~ THE DEPARTMENT MAY CAUSE THE
15 CRIMINAL PROCEEDINGS TO BE INITIATED AGAINST THE PERSON FOR PROSECUTION in the LOWEST
16 COURT OF CONCURRENT JURISDICTION IN THE county where the infraction occurred.

17 (2) After a final determination by the department that an infraction has been committed, a
18 contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to
19 [section ~~26~~ 24], and who fails to file an appeal pursuant to [section ~~25~~ 23] is guilty of a misdemeanor and
20 ~~must be prosecuted~~ THE DEPARTMENT MAY CAUSE THE CRIMINAL PROCEEDINGS TO BE INITIATED
21 AGAINST THE PERSON FOR PROSECUTION in the LOWEST COURT OF CONCURRENT JURISDICTION IN
22 THE county in which the infraction occurred.

23 (3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies
24 pursuant to [section ~~25~~ 23] is guilty of a misdemeanor and ~~must be prosecuted~~ THE DEPARTMENT MAY
25 CAUSE THE CRIMINAL PROCEEDINGS TO BE INITIATED AGAINST THE PERSON FOR PROSECUTION in
26 the LOWEST COURT OF CONCURRENT JURISDICTION IN THE county where the infraction occurred.

27 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to
28 refuse to sign a written promise to respond to the notice.

29 (5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction
30 to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through

1 ~~28 25]~~, regardless of the ultimate disposition of the infraction.

2

3 ~~**NEW SECTION. Section 24. Representation by attorney**~~ ~~department represented by attorney~~
4 ~~general. A contractor subject to proceedings under [sections 1 through 28] may appear or be represented~~
5 ~~by counsel. The department must be represented by the attorney general in the administrative proceeding~~
6 ~~and in any subsequent appeals under [sections 1 through 28].~~

7

8 **NEW SECTION. Section 23. Infraction -- administrative hearing -- procedure -- burden of proof --**
9 **order -- appeal.** (1) The department shall conduct a case related to a contractor's notice of infraction
10 pursuant to Title 2, chapter 4.

11 (2) The burden of proof is on the department to establish the commission of the infraction by a
12 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes
13 that, at the time the notice was issued, the defendant was registered by the department, was not
14 suspended, or was exempt from registration.

15 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification
16 from the department that the contractor named in the notice of infraction was registered, was not
17 suspended, or was exempt from registration at the time the notice of infraction was issued.

18 (4) After consideration of the evidence and argument, the hearings officer shall determine whether
19 the infraction was committed. If it has not been established that the infraction was committed, an order
20 dismissing the notice must be entered in the record of the proceedings. If it has been established that the
21 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the
22 decision and order determining whether the infraction was committed.

23 (5) An appeal from the hearings officer's determination or order must be to the district court.

24

25 **NEW SECTION. Section 24. Infraction -- penalty.** (1) A contractor found to have committed an
26 infraction under [section ~~16~~ 15] must be assessed a penalty of \$150 for each day for each infraction in
27 which the contractor conducted business without being registered, beginning with the date the notice of
28 infraction was served to the contractor or to the contractor's agent.

29 (2) The ~~hearings officer~~ **DEPARTMENT** may waive, reduce, or suspend the penalty imposed for the
30 infraction only upon a showing of good cause that the penalty would be unduly burdensome to the

1 contractor.

2 (3) A penalty collected under this section must be deposited in the ~~general fund~~ STATE SPECIAL
3 REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR ADMINISTRATION AND ENFORCEMENT
4 OF [SECTIONS 1 THROUGH 25].

5
6 ~~**NEW SECTION. Section 27. Violations — consumer protection act.**~~ The consumers of this state
7 ~~have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with~~
8 ~~contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under~~
9 ~~[sections 1 through 28] is considered to affect the public interest and constitutes a violation of Title 30,~~
10 ~~chapter 14, part 1. The surety bond is not liable for penalties or for violations of Title 30, chapter 14, part~~
11 ~~4.~~

12
13 **NEW SECTION. Section 25. Rulemaking authority.** The department may adopt rules to implement
14 [sections 1 through ~~28~~ 25].

15
16 **Section 26.** Section 37-71-211, MCA, is amended to read:

17 **"37-71-211. Application for license -- contents. (1)** To obtain a license under this chapter, the
18 applicant shall submit on ~~such forms as that~~ the department ~~shall prescribe~~ prescribes an application, under
19 oath, ~~which shall that must~~ contain:

20 (a) proof of registration under [sections 1 through ~~28~~ 25];

21 (b) a statement of the applicant's experience and qualifications as a contractor;

22 (c) the value and character of contract work completed and for whom performed during 5 years
23 prior to the filing of ~~such the~~ application; and

24 (d) a complete financial statement on ~~such the~~ forms and disclosing ~~such the~~ information as shall
25 be that is required by the department.

26 (2) ~~Such The~~ application shall must also contain ~~such any~~ other information as ~~that~~ may be
27 requested by the department under ~~such the~~ rules as may be adopted by the department and ~~which that~~
28 will assist the department in determining the applicant's fitness to act in the capacity of a public contractor
29 as defined in this chapter.

30 (3) ~~Such The~~ application shall must also contain a statement that the applicant desires the issuance

1 of a license under the terms of this chapter and ~~shall~~ must specify the field of contracting and the class of
2 license applied for."

3
4 **Section 27.** Section 39-3-703, MCA, is amended to read:

5 **"39-3-703. Contractor to furnish bond ~~for wages and fringe benefits~~ -- bond requirements --**
6 **deposit.** (1) ~~Any~~ Except as provided in subsection (3), a contractor who contracts with ~~another~~ ANY
7 PERSON OR ENTITY to do any work or perform any services for the ~~other~~ PERSON OR ENTITY, ~~except~~
8 ~~personal services of the contractor not involving work of hired employees,~~ shall furnish a surety bond or
9 other form of security ~~to the other which shall~~ that must be:

10 (a) approved by the commissioner;

11 (b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the~~
12 ~~commissioner;~~

13 ~~(i) EQUAL TO THE CONTRACTOR'S AVERAGE MONTHLY PAYROLL, BASED ON 12~~
14 ~~CONSECUTIVE MONTHS' PAYROLL, AS ESTIMATED BY THE COMMISSIONER; OR~~

15 ~~(iii) of \$6,000 for a general contractor and \$4,000 for a specialty contractor IF THE CONTRACTOR~~
16 ~~IS A SOLE PROPRIETOR, AN INDEPENDENT CONTRACTOR, A CORPORATE OFFICER, OR A MANAGER~~
17 ~~OR MEMBER OF A LIMITED LIABILITY COMPANY;~~

18 ~~(i) OF \$6,000 FOR A GENERAL CONTRACTOR OR \$4,000 FOR A SPECIALTY CONTRACTOR IF~~
19 ~~THE CONTRACTOR IS A SOLE PROPRIETOR, AN INDEPENDENT CONTRACTOR, OR A CORPORATE~~
20 ~~OFFICER WORKING AS AN INDIVIDUAL WITHOUT EMPLOYEES; OR~~

21 ~~(ii) EQUAL TO A CONTRACTOR'S AVERAGE MONTHLY EMPLOYEE PAYROLL, BASED ON 12~~
22 ~~CONSECUTIVE MONTHS' PAYROLL, AS ESTIMATED BY THE COMMISSIONER. HOWEVER, THE AMOUNT~~
23 ~~MAY NOT BE LESS THAN \$6,000 FOR A GENERAL CONTRACTOR OR \$4,000 FOR A SPECIALTY~~
24 ~~CONTRACTOR AND MAY NOT EXCEED \$25,000 FOR ANY CONTRACTOR.~~

25 (c) in the name of the state of Montana;

26 (d) for the purpose of ~~insuring~~ GUARANTEEING:

27 (i) the wages and fringe benefits of all workers employed by the contractor for the contracted
28 work;

29 (ii) all taxes and contributions due to the state;

30 (iii) ~~payment to persons furnishing labor or material and renting or supplying equipment to the~~

1 contractor;

2 (iv) all amounts that may be adjudged against the contractor by reason of negligent or improper
3 work or breach of contract;

4 (e) filed with the commissioner within 1 week of the making of the contract or the commencement
5 of work ~~thereunder~~ under the contract, whichever comes first.

6 (2) Only one bond ~~shall be~~ is required on any contractor for each year, and when the bond is filed
7 with and approved by the commissioner, the commissioner shall certify to any person contracting with a
8 contractor that the bond is in full force and effect.

9 (3) In lieu of the surety bond required by subsection (1), the contractor may file with the
10 department a deposit consisting of cash or other security acceptable to the department.

11 (4) A change in the name of a business or a change in the type of business may not impair a bond
12 for the purposes of this section as long as one of the original applicants for the bond maintains partial
13 ownership in the business covered by the bond."

14
15 **Section 28.** Section 39-3-705, MCA, is amended to read:

16 **"39-3-705. Suit on bond. (1)** Any employee employed by a contractor person, firm, or corporation
17 having a claim against the contractor for any of the items referred to in 39-3-703 may bring an action on
18 the surety bond in his own name for unpaid wages and fringe benefits in the district court in the county
19 in which the work was performed or in any county that has jurisdiction over the contractor.

20 (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon
21 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the
22 appropriate district court within 1 year from the date of expiration of the certificate of registration that was
23 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing
24 the state became due, the materials and equipment were furnished, or the claimed contract work was
25 completed. Service of process in an action against the contractor, the contractor's bond, or the deposit
26 must be exclusively by service upon the department. Three copies of the summons and complaint and a
27 fee of \$10 for handling costs must be served by certified mail upon the department at the time suit is
28 started. The \$10 fee must be deposited in the state special revenue fund to the credit of the department.
29 The department shall maintain a record, available for public inspection, of all suits served. Service is not
30 complete until the department receives the \$10 fee and three copies of the summons and complaint. The

1 service constitutes service on the registrant and the surety for suit upon the bond or deposit. The
2 department shall transmit MAIL the summons and complaint or a copy of the summons and complaint to
3 the registrant AT THE ADDRESS listed in the REGISTRANT'S application and to the surety within 48 hours
4 after it has been received.

5 (3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or
6 for any penalty assessed pursuant to [sections 1 through 28 25]. The liability for the surety may not
7 accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The
8 surety may, upon notice to the department and the parties, tender to the clerk of the court that has
9 jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less
10 any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the
11 tender. However, if the actions commenced and pending at any one time exceed the amount of the bond
12 then unimpaired, claims must be satisfied from the bond in the following order:

- 13 (a) labor, including employee benefits;
14 ~~(b) claims for breach of contract by a party to the construction contract;~~
15 ~~(c)(B) materials and equipment;~~
16 ~~(d)(C)(B) taxes and contributions due to the state; and~~
17 ~~(e)(D)(C) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.~~

18 (4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in
19 effect in the full amount required in 39-3-703, the department shall suspend the registration of the
20 contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied
21 judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount
22 prescribed by 39-3-703.

23 (5) A person who filed and served a summons and complaint as required by this section and who
24 has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute
25 upon the security held by the department by serving a certified copy of the unsatisfied final judgment within
26 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the
27 department shall pay or order to be paid from the deposit, through the district court that rendered the
28 judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must
29 be the order of receipt by the department, but the department has no liability for payment in excess of the
30 amount of the deposit."

"39-3-706. Liability of ~~person~~ contractor contracting with another contractor ~~for failure to require~~
Any ~~person~~ A contractor contracting with a another contractor who fails to require the other
ctor to acquire the surety bond provided for in ~~39-3-703(1)~~ be registered pursuant to [sections 1
n 25] is liable to the employees of ~~that~~ the other contractor for their wages and fringe benefits on
rticular job."

"39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the
s, both under his the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business; and

(c) has received an exemption granted under 39-71-401(3).

(2) An individual performing services for remuneration is considered to be an employee under this Act unless the requirements of subsection (1) are met."

NEW SECTION. Section 31. Repealer. Section 39-3-704, MCA, is repealed.

NEW SECTION. Section 32. Codification instruction. [Sections 1 through ~~28~~ 25] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through ~~28~~ 25].

NEW SECTION. Section 33. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-END-